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LEGAL Studies 3010

Consumer and Property Law



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LEGAL Studies 3010

Consumer and Property Law

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Legal Studies 3010
Consumer and Property Law
Student Module Booklet
Learning Technologies Branch
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This document is intended for	
Students	✓
Teachers	✓
Administrators	
Home Instructors	
General Public	
Other	



You may find the following Internet sites useful:

- Alberta Education, <http://www.education.gov.ab.ca>
- Learning Technologies Branch, <http://www.education.gov.ab.ca/lrb>
- Learning Resources Centre, <http://www.lrc.education.gov.ab.ca>

Exploring the electronic information superhighway can be educational and entertaining. However, be aware that these computer networks are not censored. Students may unintentionally or purposely find articles on the Internet that may be offensive or inappropriate. As well, the sources of information are not always cited and the content may not be accurate. Therefore, students may wish to confirm facts with a second source.

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WELCOME

Welcome to Legal Studies 3010. We hope you enjoy your study of Consumer and Property Law.



- Renting Personal and Real Property
- Purchasing a Home
- Making Investments



- Protecting the Consumer
- Building or Renovating a Home



- Challenging Issues
- Law-Related Careers

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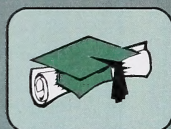
CAREER AND TECHNOLOGY STUDIES INFORMATION

Legal Studies is one of the 22 strands of Career and Technology Studies designed for Alberta secondary students. The optional CTS program will provide you with opportunities to

- investigate career options and make effective career choices
- use technology effectively and efficiently
- apply and reinforce concepts you learned in other courses
- prepare you for entry into the workplace or further learning

The strands in Career and Technology Studies are designed to stand alone or be integrated with other strands or school courses to meet your learning needs.

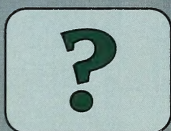
CTS has a number of basic competencies (knowledge, skills, and attitudes) that will be identified throughout by these icons:



Careers: Identify appropriate career linkages within the strand being studied.



Communication: Effectively present concise written, visual, and oral communications.



Ethics: Make judgements about whether behaviour is right or wrong on personal, community, and global levels.



Technology: Effectively use technology when required.



Innovation: Recognize opportunities and problems, and identify and suggest new ideas.



Task Management: Demonstrate an ability to locate and use resources and an ability to use time effectively.



Teamwork: Work towards goals co-operatively, collaboratively, or independently, and acknowledge the opinions of others.



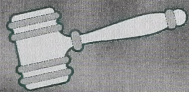
Safety: Assess potential risks, and follow personal and environmental safety procedures.

These basic competencies build skills that are useful in a broad range of lifetime endeavours.

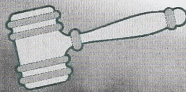
The eight icons described above indicate to you that a basic competency has been identified in a lesson. Note, however, that some of these competencies might relate more to one strand than another, so it might be that not all icons will appear in this particular course.

Note carefully that CTS courses are competency based; you must, therefore, successfully complete each component to receive credit for the course.

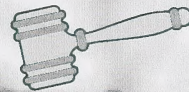
LEGAL STUDIES STRAND INFORMATION



Introductory



Intermediate



Advanced

Personal Context

LGS 1010
You and the Law 1:
As a Consumer and
as a Family Member

LGS 1020
You and the Law 2:
In Society and
in the Workplace

Societal Context

LGS 2010
Family Law

LGS 2020
Labour Law

LGS 2030
Environmental Law

LGS 2050
Law and the Traveller

LGS 3010
Consumer and Property Law

LGS 3020
Dispute Resolution

LGS 3040
Negligence

LGS 3050
Law and Small Business

LGS 3060
Controversy and Change

LGS 3070
Landmark Decisions

LGS 3080
Criminal Law

--- Recommended sequence

Some of these courses may not yet be in a distance learning format.

LEGAL STUDIES 3010 OVERVIEW



Lev and Sue have just been pre-approved for a mortgage and are now looking for a house to purchase. One day the couple has a brief conversation that goes like this:

Lev: I still think renting is a lot less complicated than buying property.

Sue: Perhaps, but we don't have as much security if we're only renting.

Lev: We can have enough security if we get a lease. And we'd avoid all these down payments, property taxes, real estate agents, lawyers, and legal documents—not to mention having to buy appliances. It's all too overwhelming.

Sue: Our banker says owning property is a good investment, remember? If we rent for twenty years, we'll have nothing to show for it; if we make mortgage payments, we'll own our own home.

Chances are you haven't had to face a decision like this yet, but you may before too long. When you think of such matters, do you find yourself, like Lev, just a little overwhelmed?

In this course, you'll take a look at the laws governing buying and renting property—both personal property (things you can move around) and real estate. You'll also examine laws that protect you as a consumer when buying goods and services, renting property, buying a home, building your own house—and even when you're making investments. You'll find that this course contains a good deal of information; when you're finished it, you should have a solid grounding in both consumer law and property law.

Legal Studies 3010 Consumer and Property Law



Section 1
Renting Property



Section 2
Buying or Building a Home



Section 3
Consumers and the Law

Assessment and Feedback

This course is worth one credit and is comprised of three sections. Within each section, your work is grouped into lessons. Within the lessons, there are readings, explanations, and questions for you to work through. You'll correct your work yourself using the suggested answers that follow each lesson. These suggested answers will provide you with immediate feedback on your progress.

Accompanying this Student Module Booklet are two Assignment Booklets. You'll be referred to the assignments in these booklets from time to time as you work through the course—frequently at the end of a section. Your work in these booklets will be submitted to your teacher for assessment, and at least a portion of your grade will be based on them. The mark distribution is as follows:

Section 1 Assignment	27 marks
Section 2 Assignment	33 marks
Section 3 Assignment	40 marks
TOTAL	100 marks

Be sure to check with your teacher if this mark allocation is valid for you. Some teachers like to include other reviews and assignments.

In addition to your assignments, you will likely be required to complete a final test. The weighting for this final test will be determined by your teacher.

Resources

In order to complete Legal Studies 3010, you'll need the following resources:

- the course textbook, *All About Law*, fifth edition, by Gibson, Murphy, Jarman, and Grant (Thomson/Nelson Canada, 2003)
- a notebook or binder in which to respond to questions asked in this Student Module Booklet

You should have access to a computer and complete your assignments with a word-processing application wherever possible. As well, you should arrange to have access to the Internet. Though it won't be mandatory, some Going Further activities may direct you to watch a live or recorded television show.

LearnAlberta.ca

LearnAlberta.ca is a protected digital learning environment for Albertans. This Alberta Education portal, found at <http://www.learnalberta.ca>, is a place where you can support your learning by accessing resources for projects, homework, help, review, or study.

For example, LearnAlberta.ca contains a large Online Reference Centre that includes multimedia encyclopedias, journals, newspapers, transcripts, images, maps, and more. The National Geographic site contains many current video clips that have been indexed for Alberta Programs of Study. The content is organized by grade level, subject, and curriculum objective. Use the search engine to quickly find key concepts. Check this site often as new interactive multimedia segments are being added all the time.

If you find a password is required, contact your teacher or school to get one. No fee is required.

Visual Cues

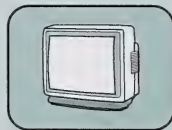
As well as the CTS basic-competency visual cues presented earlier, from time to time you may encounter the following cues or icons in the margin of this Student Module Booklet. Be sure you understand what they're prompting you to do.



Textbook



Internet



Television

Remember that any website address given in this course is subject to change.

Strategies for Completing This Course

Organize your materials and work area before you begin. Be sure that you have everything that you need. You should also have a quiet area in which to work, away from distractions. Create a schedule for yourself, and display it as a reminder.

Because one of the basic competencies of the CTS program involves skills in working with others, you're encouraged to work with a partner throughout the course if possible. Your partner can be a friend, classmate, or family member. You don't need to work with the same partner all of the time. If you can't work with a regular partner, it would help if there were someone—a family member perhaps—with whom you can work from time to time.

The Going Further boxes that you'll encounter in the Student Module Booklet signal optional enrichment material. Going Further provides opportunities for you to investigate or research a topic or concept that you've explored in the lesson and that particularly interests you. Going Further may also give you a chance to apply your knowledge and skills in a practical way. You're encouraged to read the Going Further suggestions and to attempt these enrichment activities whenever possible.

To achieve success in this course, be sure to read all the directions carefully; work slowly and systematically through the material in the Student Module Booklet. This approach will ensure that you're prepared for your assignments. Try to set realistic goals for yourself each day and each week so that you'll complete the course in a reasonable time. Do your assignments regularly, and don't forget to review and proofread your work before sending it to your teacher. Careful work habits will greatly increase your chances for success in Legal Studies 3010.

SECTION 1

Renting Property



Do you ever stay in motels when travelling? Do members of your family ever rent vehicles? Power tools? Movies on videotape or DVD? If you drive, do you ever pay for a parking space? Does your family rent the home you live in?

Almost everyone is involved from time to time in a rental situation, whether it involves a place to live or simply an overnight movie rental. In this section, you'll examine some of the legal aspects of renting that you should be aware of. When you've finished this section, you should be able to describe the laws governing bailments, identify the principles of contract law in relation to renting, and explain the legal aspects of renting a place to live.

Lesson 1: Bailments



bailment: a situation in which one person takes temporary possession of another's property on the understanding that it will be returned later

personal property: any property you can own other than land and things attached to land

chattels: personal property

real property: land and those structures attached to it

Throughout your life, there will be many situations when you'll find yourself leaving your property in someone else's hands temporarily. Whether it's a sweater that you're leaving at the cleaners or all your worldly property you're entrusting to a moving company, there will be occasions when someone else will temporarily have possession of things you own.

Conversely, there will be many situations when you have possession of things someone else owns—for instance, whenever you borrow or rent something. The law governing situations like these is called the law of **bailments**.

Bailments take place only with what lawyers call **personal property** or **chattels**, so it's important to understand how property is classified legally. This is really quite simple; basically, the law recognizes two distinct types of property or possessions:

- **real property**
- **personal property**

Real property consists of land (think of *real* estate) and things attached to the land like buildings, wells, and other structures. Personal property (or chattels) includes everything else: vehicles, jewellery, clothes—anything you can own that's movable.

1. Use check marks (✓) to show whether each of the following is personal or real property.

Item	Real Property	Personal Property
truck		
fence		
book		
sofa		
house		
dog		
computer		
ornamental shrub		
portable garden shed		
mobile home		

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

bailor: the owner of the goods temporarily given to another

bailee: a person temporarily given possession of another's goods

A bailment occurs when an owner of personal property (the bailor) temporarily entrusts custody of the property to another person (the bailee) for some mutually accepted reason. For example, if you took your vehicle in to the auto-body shop to be repaired, you'd be the bailor—the owner of the goods—and the auto-body shop would be the bailee. You'd retain ownership of the vehicle, and you and the shop would both understand that this was only a temporary transfer of possession until the repairs were completed. In addition, you'd both understand that payment was to be made to the bailee for the cost of the repairs.

2. Use a check mark (✓) to indicate which of the following situations are bailments.

Andre in Quebec gives a parcel to a courier to deliver to Kurt in Alberta.	
Prakesh gives his old trumpet to Mike, telling him he hopes he never sees it again.	
Marissa puts her furniture into Floyd's Storage Emporium while she teaches for a year in Korea.	

Ernie leaves his shoes at Wilma's Shoe Repair to be resoled.	
Jon rents the new Matt Damon thriller for a cheap Friday night's entertainment.	
Ariadne sells her computer to Donna.	
Mrs. Jinks gives her son her old car as a gift when he goes off to college.	

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

Types of Bailments

As you can see from what you've read, there are several different types of bailments. All bailments, in fact, are divided into two broad classifications:

- gratuitous (in other words, free) bailments
- bailments for reward

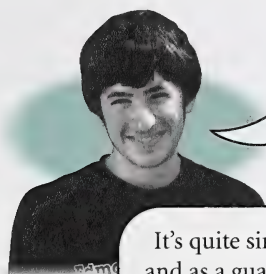
This is really a very simple distinction. A gratuitous, or free, bailment is one in which only one of the two parties involved receives some benefit. For example, if you borrow your neighbour's snowblower to clear your driveway after a blizzard, you've created a gratuitous bailment. Your neighbour derives no obvious benefit—except, perhaps, your good will. By contrast, a bailment for reward is one in which both parties benefit. If you pay your neighbour for the use of that snowblower, a bailment for reward has been created.



Bailments for reward are, in turn, classified according to type. Here's a list of the most common types:

- Rental bailments occur when a person rents or leases goods to another person for a fee. Common examples would be vehicles, tools, and equipment of various types.
- Repair, service, or processing bailments occur when someone temporarily turns goods over to another party for repair or processing. If you take your car in for servicing, leave a pair of shoes at the shoe-repair shop, or drop off a coat at the dry cleaners, you're creating a bailment of this sort.
- Storage or warehousing bailments are created when an individual places an article with someone else for storage or safekeeping. Examples would be a boat left in a marina, jewellery placed in a bank's safety deposit box, and a car parked in a downtown parking lot.

- Carriage of goods bailments occur when a person entrusts possessions to a public carrier such as a trucking company, a rail line, or a courier.
- Innkeeper bailments occur when travellers stay at a hotel, motel, or some other sort of lodging for which they're paying a fee. In this sort of situation, the person or company owning the establishment (known legally as the *innkeeper*) takes temporary responsibility for any goods the traveller happens to have with him or her.
- Securities and valuables bailments are created when goods are left at places like pawnshops as security for borrowed money.



I've never been quite clear on just how pawnshops work.

It's quite simple. The pawnbroker lends you money, and as a guarantee that you'll repay it, you leave some possession at the shop. The pawnbroker is the bailee, and he or she must return the goods to you when you pay back the money—along with interest. If you don't pay it back, however, the pawnbroker can assume ownership of the goods and sell them. As soon as ownership is transferred, the bailment is over.

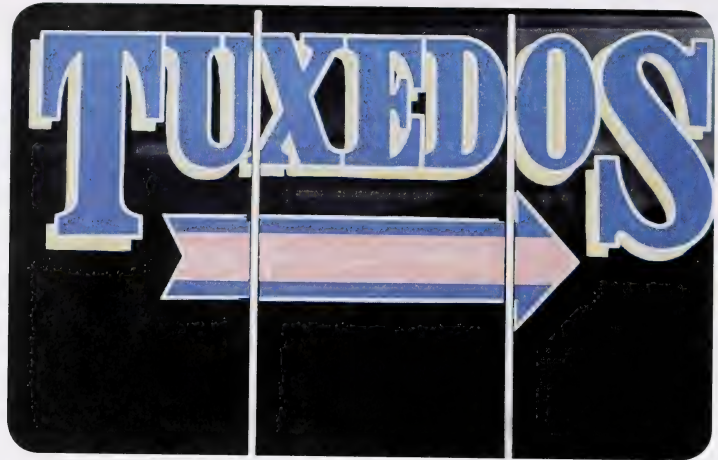


3. Identify the type of bailment created in each of the following situations:

Situation	Type of Bailment
Sam rents a personal watercraft for two hours.	
Claire asks a friend if she can park her car in her friend's garage while on vacation.	
Mario hires a moving company to transfer his furniture to Calgary.	
Collette stores her coin collection in a safety deposit box at the bank.	
The ABC Company stores its extra inventory in a warehouse owned by the XYZ company.	
Wei rents a motel room, puts her suitcases inside, and goes out to a restaurant.	

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

Responsibilities of Bailors and Bailees



Of course, simply knowing that bailments exist and being able to identify the different sorts isn't of much use if you aren't aware of the legal rights and responsibilities that both parties have every time a bailment is created. For instance, if you borrow a friend's lawnmower, hit a rock, and bend the shaft, the question you'd want answered right away is whether you're legally required to replace the mower. And what about the dry cleaner who ruins a dress, the courier company that loses a package, and the motel owner who learns that a burglar has stolen a guest's jewellery? In all these cases, it's necessary to turn to the law to discover just who's responsible for what.

There are three areas of law that determine the rights and responsibilities involved in bailments. They are

- common-law standards
- any statutes that may exist
- any specific contractual arrangements the bailor and bailee may have agreed upon

This may sound complicated, but it isn't. Each point is explained in the material that follows. If you've taken other Legal Studies courses, some of it will probably be very familiar.

Common-Law Standards

common law: the body of law, based on judges' decisions, that has developed over time in the English-speaking world

precedent: a court decision that lower courts must follow in similar cases

The backbone of the legal systems used in English-speaking countries all over the world is the **common law**. Basically, the common law is simply the collection of decisions judges have made in trials over the centuries. When a judge decides a case in a certain way, that decision becomes a **precedent**. Afterward, other judges in lower courts are required to follow that precedent in deciding similar cases. These precedents, taken together, make up the *common law* (also called *case law* or *judge-made law*). This law isn't written down in one spot like an Act of Parliament, but it does form the basis of our legal system.

Statute Law

statute: a law passed by a government

When you think of laws, you probably think of **statute** law. A **statute** is simply an act passed by a government—in Canada by either the federal government or one of the provincial or territorial governments.

Examples of statutes you've likely heard of are the *Criminal Code* and the *Youth Criminal Justice Act* (both federal) and the *School Act* (Albertan). When a statute is passed, it takes priority over the common law; but if it's ever repealed (cancelled) or struck down by a higher court as unconstitutional, the common law automatically comes back into play.



So if, say, the common law says that innkeepers are responsible for guests' belongings but the government passes a statute saying they're not, the statute is the one to go by?

That's right. But anything the statute doesn't deal with or is unclear on will still be decided by the old common-law principles.



4. Indicate whether each of the following is an example of statute law or common (case) law:
- a. The Supreme Court of Canada rules that an institution can require its employees to retire at a specified age.
 - b. *Alberta's Employment Standard's Code* sets a minimum wage for people working in the province.
 - c. An Ontario judge rules that adult children have a legal duty to look after their parents if their parents become destitute.
 - d. The federal government passes an act requiring gun owners to register their weapons.
 - e. The Supreme Court of Canada rules that a clause in an Alberta statute contradicts Canada's constitution and so cannot be enforced in the courts.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Contracts

Individuals and organizations can, of course, make their own contracts whenever they create bailments. For example, the law may say that a bailee is responsible for a bailor's goods when they're in the bailee's possession, but bailor and bailee may agree that in a particular case this won't be true. Your lawnmower, for instance, may be in rough shape already, and the friend who wants to borrow it may express a concern that it might break down. You could agree with your friend that you won't hold him or her responsible for whatever happens to it, since you're just looking for an excuse to buy a new one anyway. If the two of you reach such an agreement, and you both understand it clearly, this will take priority over the law unless the law expressly forbids such an agreement.



What the Law Is

So what does all this mean for the law governing bailments? For the most part, the applicable law is still the common law, but there are some statutes—like Alberta's *Innkeepers Act*—that modify common-law principles. And, of course, people setting up bailments can always create their own contracts. Most of the discussion that follows, then, will be about the common law.

Gratuitous Bailments

When it comes to gratuitous bailments, the common law makes a distinction between those that benefit the bailor and those that benefit the bailee. An example of a situation set up for the benefit of the bailor would be someone leaving his or her parakeet with a friend while on vacation. By contrast, a bailment established for the bailee would be any normal borrowing situation—for instance, if you borrowed a friend's snowboard for a weekend in the mountains.

The question is, what standard of care does the law assume bailees should exercise while bailors' goods are in their possession? In the case of a gratuitous bailment for the benefit of the bailor, the law expects the normal standard that careful people could be expected to take with their own property. If the goods are lost or damaged, the **onus** will be on the bailor to show that the bailee was unusually (or *grossly*) negligent.

onus: the responsibility to prove something in court

In the case of a gratuitous bailment for the benefit of the bailee, a higher standard of care is expected. In this situation, if the goods come to harm, the onus is on the bailee to prove that absolutely no negligence was involved. If this can't be shown, the bailee will be held responsible for the damage (but not for normal wear and tear). A bailee isn't permitted to lend the goods to a third party without the bailor's permission. If this does happen and the goods are damaged, the bailee is responsible.

5. Jan lends Lucinda her canoe for a weekend at a lake in the mountains. Lucinda finds lake canoeing to be pretty boring, so Sunday afternoon she joins some friends on the river for some white-water adventure. The canoe ends up wrapped around a rock.
- If Jan takes Lucinda to court, what will the judge likely decide? Explain your answer.
 - Assume that Lucinda had stayed on the lake, but a freak storm had come up and wrecked the canoe. What would the court probably decide in this situation?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Bailments for Reward

In the case of bailments for reward, legal rights and responsibilities vary depending on the type of bailment. The following chart presents the basic common-law situation.

Type of Bailment	Duties of Bailor	Duties of Bailee
Rental	<ul style="list-style-type: none">• provide goods in satisfactory condition• let bailee have full use of the goods• carry out any necessary repairs• inform bailee of any noxious or dangerous elements in the goods (e.g., combustible fuels)	<ul style="list-style-type: none">• exercise reasonable care while using the goods• not lend or rent the goods to a third party• return the goods at agreed-upon time• pay agreed-upon rental• advise bailor of any need for repairs
Repair, Service, or Processing	<ul style="list-style-type: none">• pay the agreed-upon price• inform bailee of any dangerous goods	<ul style="list-style-type: none">• take reasonable care of the goods• do the work in a reasonable time period• do only the repairs agreed upon• do the work in a reasonably skilled manner

Storage or Warehouse	<ul style="list-style-type: none"> • pay the agreed-upon price • not store any dangerous goods without informing the bailee 	<ul style="list-style-type: none"> • take reasonable care of the goods
Carriage of Goods	<ul style="list-style-type: none"> • pay the agreed-upon price • not ship any dangerous items without informing the bailee 	<ul style="list-style-type: none"> • deliver the item at the agreed-upon time • take reasonable care of the item
Innkeeper	<ul style="list-style-type: none"> • pay the agreed-upon price 	<ul style="list-style-type: none"> • assume liability for any loss or damage of guests' goods
Securities and Valuables	<ul style="list-style-type: none"> • entrust the goods to the bailee for the agreed-upon price 	<ul style="list-style-type: none"> • take reasonable care of the goods • return the goods as agreed • warn bailor if goods are to be sold

6. Now try answering the following questions according to common-law principles.

- a. Lorne operates a business that rents out tools and equipment. He rents Ali a floor sander knowing that the drum no longer sits level; the result is that Ali ruins the hardwood floor he's installing in his dining room. Will Lorne be held liable for the repairs to Ali's floor? Explain.
- b. Ali ends up renting a sander from another business. While using it, the motor burns out. Will Ali have to pay for a new motor? Why or why not?
- c. Madeleine leaves her boat with Ben's Boat Repairs to have the engine worked on. One of Ben's employees accidentally causes the engine to catch fire, seriously damaging it. Will a court likely find that Ben's Boat Repairs must pay for the damage? Explain.
- d. Juan borrows Bill's pick-up truck to haul things to the recycling depot. On the way to the depot, Juan hits the ditch to avoid a deer and damages the front end of the truck. Will Juan be liable for the repairs? Explain your answer.



- e. Arlene is moving to Texas, and she's hired a moving company to transport her furniture. While driving through Kansas, the moving van is struck by a tornado and swept off the road. Will the company be responsible for damage to Arlene's belongings? Why or why not?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Liens

As you've read, bailees who are repairing, storing, or moving the goods entrusted to them have the right to expect payment for their work. But what happens if they've done the repairs and the bailor won't pay for them? In this case, the law may give the bailee what's called a lien on the goods until payment is made. A lien is simply a right to retain possession of another's goods until money owing is paid. This means, for example, that if Speedy Moving and Storage has moved a customer's furniture, they may be able to keep the goods in storage until the customer pays for the service.

The statute law governing liens can be complex; the important thing is to be aware that they exist. If you ever find yourself in a situation involving liens, either as bailor or bailee, you should consult a lawyer to learn what your legal rights are.

Statutes Affecting Bailments

As mentioned previously, sometimes statutes affect the common-law rules of bailments. A good example is Alberta's *Innkeepers Act*. This statute, like similar ones in other provinces and territories, limits the legal responsibilities innkeepers—people who operate hotels, motels, and so on—owe their customers. If a copy of the *Act* is posted where customers can see it, the innkeeper will be liable for loss or damage only if

- the goods involved were lost or damaged by the innkeeper or an employee
- the goods were given directly to the innkeeper or an employee for safekeeping



Speaking of posting signs, sometimes you see a notice posted saying something like "The company will not be responsible for lost or stolen property." I've seen that in parking lots, for instance.

Good point. That brings us to our last topic in discussing bailments—making specific arrangements that modify the usual rules.



Limiting Liability Through Contracts

You've probably seen signs like the one mentioned in the preceding dialogue. Or you may have seen a disclaimer like this on the back of a ticket or a bill. Companies whose business involves bailments often post these sorts of disclaimers in an attempt to limit their liability for loss or damage. The question is, how much weight do they carry?

As you learned earlier in this lesson, any time two parties agree to a bailment situation, they can make a contract to limit liability. For instance, if you leave your plants with a friend to look after, you could say "Don't worry if they die: I'm not going to hold you responsible or anything." Of course, the agreement can be far more formal than this; you could sign a contract with a storage firm, for instance, in which you agree that you won't hold the company liable for any losses or damage.

A question arises, however, when one party to a bailment (usually it's the bailee) tries to limit its responsibility without the other party explicitly agreeing. The usual way of doing this is by posting signs and notices or by putting disclaimers on the back of tickets.



7. Karen goes to pick up her dry cleaning only to find her expensive leather coat ruined. When she complains, the owner of the cleaning firm points to a disclaimer on the back of his ticket saying that customers leave their clothes at their own risk and that the cleaner won't be held liable for damage. If this case ended up in court and you were the judge, what would you decide? Give reasons for your answer.

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

When situations like this arise, the courts normally insist that the bailee must have taken reasonable steps to draw the bailor's attention to the disclaimer. A large sign prominently displayed would probably be considered a reasonable step; a notice in small print on the back of a ticket probably wouldn't be.

What this means is that whenever you leave your belongings with another party for repair, storage, or shipment, you should take steps to discover if the bailee is using disclaimers to limit responsibility. Look for signs, and, to be safe, read the back of any tickets or agreements. To be safer yet, ask the person you're dealing with what his or her policy is.

And that just about completes your overview of bailments. Before moving on to the next lesson, try the three review questions that follow. If they don't give you any problems, you're ready to dig into Lesson 2.

8. For each of the following,
- tell whether the bailment is gratuitous or for reward
 - in the case of a gratuitous bailment, explain whether it's for the benefit of the bailee or bailor
 - in the case of a bailment for reward, identify the type

- a. Christine leaves her pet birds with a friend to care for while she's on vacation.
- b. Gschu rents a tile cutter from Ted's Tiles while refinishing her bathroom.
- c. Myron borrows Fred's car for a quick trip downtown at noon.
- d. Natalia leaves her belongings in her hotel room during a conference.
- e. Sam takes his jacket to the cleaners.
- f. Reg hires Mo's Moving Machine to transport his belongings from his old house to his new one.



- 9. Lamar rents a heavy-duty lawnmower from a local tool-rental establishment. While he's using it as instructed, the machine suddenly seizes up and refuses to run. When Lamar returns the mower, the woman at the desk says, "Looks like you really did a number on it. That'll cost you just over \$250."

Will Lamar have to pay? Explain why or why not.

- 10. Milt takes his cowboy boots to a shoe-repair outlet to be resoled. When he goes to retrieve them, the repairman says, "Golly, I gave those boots to another fella in here yesterday." When Milt demands either the boots or financial compensation, the repairman points to the back of the ticket in Milt's hand. There, in small but legible print, Milt reads, "The management will not be liable for any loss or damage done to goods left in our keeping."

Will Milt be able to get reimbursed for his boots? Explain why or why not.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Whenever you rent personal property, you're involved in a bailment. It's important to be aware of the legal aspects of bailments; but, for most people, the rental arrangements that figure far more prominently in their lives are those involving real property—in other words, their homes. This is what you'll be looking at in the next lesson.

Assignment

Now open Assignment Booklet A, turn to the Section 1 Assignment, and answer questions 1, 2, and 3.

Suggested Answers

1.

Item	Real Property	Personal Property
truck		✓
fence	✓	
book		✓
sofa		✓
house	✓	
dog		✓
computer		✓
ornamental shrub	✓	
portable garden shed		✓
mobile home	✓	

For the most part, you likely found this a pretty easy exercise; but those last two are trickier. Sometimes it's unclear whether an item is attached to the land (a *fixture*) and therefore considered real property, or movable, and therefore considered personal property. In such cases, a court may have to decide. The garden shed, for instance, is portable, so it would likely be considered personal property; but if it's bolted to a solidly constructed floor, this designation may change. A mobile home, too, is designed to be movable; but if it's placed on a foundation—and even more so if something like a lean-to entryway has been added to it—it can take on the properties of a fixture.

2.

Andre in Quebec gives a parcel to a courier to deliver to Kurt in Alberta.	✓
Prakesh gives his old trumpet to Mike, telling him he hopes he never sees it again.	
Marissa puts her furniture into Floyd's Storage Emporium while she teaches for a year in Korea.	✓
Ernie leaves his shoes at Wilma's Shoe Repair to be resoled.	✓
Jon rents the new Matt Damon thriller for a cheap Friday night's entertainment.	✓
Ariadne sells her computer to Donna.	
Mrs. Jinks gives her son her old car as a gift when he goes off to college.	

3.

Situation	Type of Bailment
Sam rents a personal watercraft for two hours.	rental
Claire asks a friend if she can park her car in her friend's garage while on vacation.	gratuitous
Mario hires a moving company to transfer his furniture to Calgary.	carriage of goods
Collette stores her coin collection in a safety deposit box at the bank.	storage
The ABC Company stores its extra inventory in a warehouse owned by the XYZ company.	storage
Wei rents a motel room, puts her suitcases inside, and goes out to a restaurant.	innkeeper

4. a. case law

b. statute law

c. case law

d. statute law

e. case law (The Supreme Court can strike down any part of both federal and provincial statutes that the court decides are in conflict with Canada's constitution.)

5. a. The court will likely decide that Lucinda is responsible for the cost of replacing the canoe. This was a gratuitous bailment for the benefit of the bailee (Lucinda), and so a very high standard of care is expected. The onus would be on Lucinda to show that she hadn't been negligent, but she'd have trouble doing this. Having told Jan that she'd be boating on the lake, she knowingly took the canoe into more dangerous waters.

b. Again, the onus would be on Lucinda to show that she hadn't been at all negligent. If, for instance, it turned out that there were weather predictions of storms and that Lucinda had gone canoeing anyway, she might still be held responsible. The question, however, says that a freak storm came up, so the chances are much better here that the court would rule in Lucinda's favour than in the first situation.

6. a. According to common-law principles, Lorne had the responsibility of telling Ali about any defects in the equipment that he was aware of—and even of any that he should, as the owner of the business, have been aware of. Therefore, a court would likely decided that Lorne is liable for the repairs to Ali's floor.

b. As long as Ali was using the sander in a reasonable, ordinary manner, he won't be held responsible. Bailees in rental situations aren't responsible for ordinary wear and tear on things they rent to use. If, however, Ali had, for example, hooked up the sander's motor to power some other piece of equipment, he'd most definitely be held responsible for any damage that resulted.

- c. The court will likely find Ben's company responsible for the damage. A bailee in this situation is expected to exercise the care any prudent person would exercise over his or her own goods. Allowing a fire to start accidentally shows negligence on the part of one of Ben's employees.
 - d. Juan will probably be held liable. This is a gratuitous bailment for Juan's benefit, so the onus will be on him to prove that he was in no way negligent. It's possible that he could do this in this situation since a deer can appear seemingly out of nowhere (insurance companies often regard hitting a deer as an "act of God"—something unavoidable), but it might be difficult for Juan to prove that he was driving at a moderate speed and that it was necessary for him to hit the ditch.
 - e. Here the company likely won't be held liable since a tornado would be considered an "act of God"—that is, an unforeseeable and unavoidable event. However, if the company was shown to have behaved imprudently by driving despite tornado warnings, the court might decide differently. The question is whether or not it took the care with Arlene's furniture that a reasonably careful person could be expected to take with his or her own belongings.
7. Answers will vary. As the material that follows the question explains, in cases like these the bailee is expected to make reasonable efforts to draw the customer's attention to the disclaimer. Chances are that a court would find that a notice on the back of a ticket wasn't enough to limit the cleaner's responsibility.
8. a. This is a gratuitous bailment for the benefit of the bailor.
 b. This is a bailment for reward—a rental bailment.
 c. This is a gratuitous bailment for the benefit of the bailee.
 d. This is a bailment for reward—an innkeeper bailment.
 e. This is a bailment for reward—a repair, service, and processing bailment.
 f. This is a bailment for reward—a carriage of goods bailment.
9. No, Lamar won't have to pay. It's up to the bailor in this situation to maintain the equipment in good repair. Since Lamar was using the machine properly, he should be able to reclaim at least part of the rental cost.
10. Yes, Milt should be able to get reimbursement. The disclaimer on the back of the slip would probably have been accepted by the courts if the repairman had pointed it out to Milt; but since he didn't, and since there was no large sign or any other means of alerting customers about this policy of the establishment, the disclaimer would have no effect. This means that the common-law principles would come into play to the effect that the bailee must exercise reasonable care in relation to the goods and return them to the bailor as agreed.

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Lesson 2: Renting a Home

Do you live with your parents or guardian? As a high school student, chances are you do, though you may already have moved out on your own. It's quite likely, though, that before long you'll be living away from your family; if so, you'll probably find yourself renting a place to live. You'll be a **tenant**, and you'll rent your home from the person who owns it (or from a person the owner has hired to manage the property)—your **landlord**.¹

tenant: a person who rents, rather than owns, the home in which he or she lives

landlord: a person who rents out a home to a tenant

tenancy agreement: a contract between a landlord and tenant for the rental of a property

lease: a tenancy agreement

Just as in the case of bailments, the law governing the relations between landlords and tenants can be found in three places:

- the common law
- statute law
- the actual contract—called a **tenancy agreement** or **lease**—made between the landlord and tenant



At a practical level, most of the rules that landlords and tenants in Alberta should be aware of are in a provincial statute called the *Residential Tenancies Act*. Whenever a landlord and a tenant sign a tenancy agreement, they may put into the contract specific points that they both agree upon; and as long as these agreements are legally enforceable in the courts, they'll be binding on both parties. However, the *Residential Tenancies Act* spells out many rules that apply to all tenancy agreements; so even if no mention is made of them in the lease, they still apply. If you find yourself renting a place to live sometime in the future, this means that you should first get a clear idea of your rights and obligations under this statute.

For an introduction to landlord/tenant law, open your textbook to page 548 and read sections "18.1: Introduction" and "18.2: Types of Tenancies" as far as (but not including) the heading "Classes of Tenancy," on page 549. Pay attention to the terms **lessor** and **lessee**. When you've finished the reading, answer the question that follows.

1. People often assume that to be valid a lease must be in writing. Is this so? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

¹ In everyday speech, the term *landlady* is often used for a female landlord. In the legal world, however, the term *landlord* is used for both sexes.



lessor: the landlord in a leasing arrangement

lessee: the tenant in a leasing arrangement



tenancy: the renting of real property

fixed-term tenancy: a rental agreement that begins and ends on specific dates

periodic tenancy: a rental agreement running on a day-to-day, week-to-week, or month-to-month basis

tenancy at will: a rental agreement whereby a landlord allows a tenant to stay on a premises while keeping the right to ask him or her to leave without notice

tenancy at sufferance: a situation whereby someone stays on a premises without the knowledge, or against the will, of the landlord

Different Kinds of Tenancy

There are four different classes of tenancy; the chart that follows briefly describes them. The two most important are **fixed-term tenancy** and **periodic tenancy**. Use the chart in conjunction with the short reading “Classes of Tenancy” on page 549 of your textbook to get an understanding of how tenancies differ. Then answer the questions that follow.



Types of Tenancies	
Fixed-Term Tenancy	<ul style="list-style-type: none"> • agreement to rent for a certain time and for a set amount • tenancy ends at the end of the term • no notice need be given either lessor or lessee that term is up unless parties agree to this in lease
Periodic Tenancy	<ul style="list-style-type: none"> • agreement with no set expiry date • runs from day to day, week to week, or month to month • proper notice (as set out in lease or <i>Residential Tenancies Act</i>) must be given to end agreement
Tenancy at Will	<ul style="list-style-type: none"> • agreement whereby landlord lets tenant stay but keeps the right to evict without notice
Tenancy at Sufferance	<ul style="list-style-type: none"> • situation whereby tenant stays on property against will of landlord or without landlord's permission • similar to trespassing • landlord can evict and claim past rent

The *Residential Tenancies Act* establishes most of the law in Alberta governing fixed-term and periodic tenancies.

2. Tell what type of tenancy would be involved in each of the following situations:

- Jeanette's lease expired on March 31. Now she's simply staying on and paying rent on a week-by-week basis.
- Rejean is moving out of his rented apartment and into a house he's having built. However, when his lease expires, the house isn't ready. His landlord has said he can stay on until the house is finished or the landlord lines up new tenants, whichever comes first.
- On September 1, Brad signs a lease for one year. It expires on the following August 31 and stipulates that Brad will pay \$550 a month in rent on the first day of each month.



d. Sophia's lease has expired and her landlord has refused to renew it because Sophia has been a very disruptive and irresponsible tenant. Sophia refuses to leave her apartment and no longer pays any rent. She says if the landlord wants her out, he'll have to throw her out physically.

3. Marni signs a one-year lease, but there's no clause in it about notice having to be given if her landlord wants her out at the end of the year. When the lease ends, her landlord says she has to leave right away; Marni insists that she has to give her a reasonable notice. Is Marni right? Why or why not.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Why Sign a Lease?

If the time comes when you're going to be renting a home, you might wonder whether you'd be better off signing a formal lease or simply entering into a more casual tenancy arrangement. Of course, the decision may be out of your hands; your landlord may insist that you sign a lease (this is almost always the case in an apartment building, for instance). Tenancies for a period of more than three years must be in writing; if you're simply renting a basement apartment in someone's home, however, or doing something else along those lines, you may not have to sign a formal contract. It's good to know, though, just what the advantages and disadvantages of a formal leasing arrangement are.

Personally, I'd rather not sign a written lease. I mean, you lock yourself in. If you want to leave before the lease expires, your landlord can sue you.



Yeah, but you get protection from a lease. Let's say a landlord feels like jacking your rent way up or renting your place to someone else. If you've got a lease, he can't do that until it expires.



You've both got good points, though sometimes a landlord can raise your rent even if there is a lease. The textbook reading that follows will explain this.





4. To learn a bit more about leases, turn to page 550 of your textbook and read section “18.3: Entering into a Tenancy Agreement,” as far as, but not including, the subheading “Security Deposits” on page 552. (Remember that the terms *tenancy agreement* and *lease* are normally used interchangeably.)

Construct a chart like the one that follows, and as you read, or when you’ve finished the reading, fill it in with as many advantages and disadvantages as you can. If you can think of anything not mentioned in the textbook, feel free to include it.



Advantages of Signing a Lease	Disadvantages of Signing a Lease

5. Maria fails to pay her rent two months in a row. Her landlord, after patiently waiting for her to come up with the money, finally gives her a written notice of termination. When Maria continues to remain in the apartment, her landlord arrives at her door one day, physically wrestles her onto the sidewalk, and, with the help of some friends, dumps all her possessions outdoors beside her.

Have Maria’s rights as a renter been violated? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

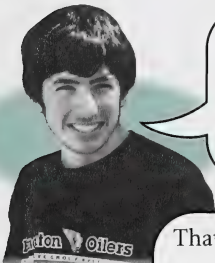
Moving In



You've entered a tenancy agreement, and you're getting ready to move into your new home. What legal rights and obligations do you—and your landlord—have at this point? The two lists that follow briefly outline the principal obligations of both landlord and tenant according to Alberta's *Residential Tenancies Act*. Remember that rights and obligations are opposite sides of a coin; in other words, a landlord's obligation is a tenant's right, and a landlord's right is a tenant's obligation.

The Landlord's Obligations

- The landlord must see that the premises are available on the agreed-upon date. If they're not, the tenant can cancel the agreement or get a court order forcing the landlord to make them available. If a tenant suffers reasonable losses (such as having to temporarily rent another place to stay), he or she can sue the landlord to cover these losses.
- The landlord must see to it that the premises are habitable—in other words, that they're safe and in a reasonable state of repair. They also have to be reasonably clean. Alberta's *Public Health Act* sets out minimum standards for rental accommodation. If the premises aren't habitable, the tenant can complain to the Board of Health, and it will take action.
- The landlord must fill out an inspection report describing the condition of the premises before the tenant moves in. This must be done within a week of the tenant's moving in and again within a week of the tenant's moving out. That way, it's possible to be sure what damage, if any, has been done by the tenant while renting the property. The landlord and tenant should fill out the report together and sign it; but if the tenant refuses to do it, the landlord can do it alone.



But a tenant would be nuts to refuse to do it. A landlord could ignore all sorts of damage that was there before the tenant moved in and then put it down on the report when the tenant was moving out and say the tenant had done it.

That's right. Properly filled-out inspection reports protect both the landlord and the tenant. They ensure that neither party can be held liable for damage for which that party wasn't responsible.



security deposit:
an amount left
by a tenant with
a landlord at the
beginning of a
tenancy to cover
any amounts
owing when the
tenancy ends
(commonly called a
damage deposit)

If proper inspection reports haven't been filled out, a landlord can't deduct money from a tenant's security deposit to pay for damage or rent owing. There will be more about this shortly.

- If there's a written lease, the landlord must give the tenant a copy within 21 days of the signing. A tenant can hold back rent until receiving it. This is the only situation where a tenant can legally withhold rent, and all rent owing must be paid once a copy of the lease has been handed over.

- One other obligation of a landlord is worth noting at this point. An Alberta statute called the *Human Rights, Citizenship and Multiculturalism Act* makes it illegal for a landlord to deny anyone accommodation, or to discriminate against anyone as to how that accommodation is provided, based on the person's "race, religious beliefs, colour, sex [gender], physical characteristics, ancestry, or place of origin." As well, a decision of the Supreme Court has now added sexual orientation to that list, even though it isn't actually mentioned in the *Act*. People with grounds for believing that they have been denied rental accommodation on one of these grounds can take their case to Alberta's Human Rights Commission.

The Tenant's Obligations

- The tenant, along with the landlord, should complete the inspection report and sign it. If a tenant refuses to do this after the landlord has offered two different reasonable times, the landlord can do it alone, but this fact must be noted on the agreement. A tenant can refuse to sign a report he or she doesn't agree with; this, too, must be noted on the report.
 - If the tenancy agreement involves a security deposit (and they almost all do), a tenant must hand over the amount agreed upon, up to a maximum of one month's rent. This deposit must be placed in a trust account for the tenant; in other words, the landlord can't just pocket it. The tenant is entitled to interest earned by the money while in this account and should receive the deposit and interest at the end of the tenancy minus the amount the landlord keeps to pay for rent owing and damage done.
6. a. Curran is moving into an apartment that he'll be renting for \$600 a month. His landlord, a very pleasant woman, tells him not to worry about the inspection report; she'll look after everything. She does, though, insist on a \$700 damage deposit ("Merely a formality," she says). As a Legal Studies student, what advice would you give to Curran?
 - b. When Curran goes to move in, he finds that the previous tenants haven't moved out. He ends up spending three nights in a nearby motel, and he has to rent temporary storage facilities for his furniture. What can he do about this situation?
7. Art and Jason, an openly gay couple, try to rent an apartment. The landlord tells them that he doesn't rent to "queers" and slams the door in their faces. Is this legal? Explain your answer.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



Going Further



Some people think that landlords should be able to pick and choose their tenants in ways forbidden by the *Human Rights, Citizenship and Multiculturalism Act*. People, for instance, who rent out basement suites in their homes, so the argument goes, should be able to decide whether they want members of certain religious faiths under their roofs. To deny them this ability, it's said, is to take away rights landlords ought to have.



What do you think? Should the rights of tenants not to be discriminated against outweigh the rights of landlords to decide who they rent to? Express your ideas in a well-defended, one-page position paper. Or, if you're working with a friend, take sides and debate the issue.

Before continuing with an overview of the basics of the next stage of a tenancy, here, in chart form, is a summary of some of the most important obligations laid out in Alberta's *Residential Tenancies Act* that relate to the process of moving in:

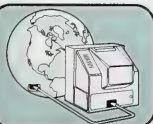
Moving In	
The landlord and tenant arrive at a tenancy agreement.	Before moving in, the landlord and tenant should come to an agreement on what type of tenancy (periodic; fixed term) this will be; how much rent is involved and when it's to be paid; and who will pay for repairs, utilities, and other services.
The tenant and landlord complete an inspection report.	An inspection report describes the condition of the premises when the tenant moves in and moves out. This report protects both the landlord and tenant in that neither party can be held liable for damages for which that party isn't responsible.
The tenant leaves a security deposit with the landlord.	A security deposit provides the landlord with some financial security if a tenant misses rent payments, damages the premises, or fails to clean up properly after moving out. The maximum amount a landlord may request is the equivalent of one month's rent.

Going Further

You can quickly access a wealth of practical information about various topics in the area of landlord and tenant law on the Internet. The Canadian Legal FAQs site is an excellent place to start. Here's an address that will give you a list of topics covered on this site:

<http://www.law-faqs.org/ab/landten.htm>

Simply click on the topics that interest you. At this point, stick to topics related to establishing a tenancy.



During the Tenancy

You've moved into your new apartment, and you hope to live there for several years. But what if you run into problems? Suppose a neighbour plays loud music every night until 3:00 a.m.? What if your landlord starts letting himself (or herself) into your apartment while you're at work? Just what legal rights do you have in situations like these?

The lists that follow outline some of the principal obligations both you and your landlord have during your tenancy agreement. Once again, remember that a landlord's obligation is your right and vice versa.



The Landlord's Obligations

quiet enjoyment:
a tenant's right to be free from interference from another person in a rented premises

- By common law, a landlord must not disturb a tenant's **quiet enjoyment** of the premises. This means simply that the premises are the home of the tenant; and, as such, the tenant has the right to be left alone to live in them without undue interference. The building must be maintained up to standards set by the Board of Health, and areas used in common (such as hallways) must be kept in a state of reasonable repair and cleanliness.
- The landlord cannot enter the tenant's home except as the law allows. This means that he or she can enter
 - at any time with the permission of any adult who's legally on the premises
 - without permission if there are reasonable grounds for believing that an emergency exists or the premises have been abandoned
 - without permission to make inspections or repairs or to show the premises to prospective tenants as long as proper notice has been given. Proper notice, according to the *Residential Tenancies Act*, must be in writing and given to the tenant at least 24 hours in advance. The notice must be precise, giving dates, times, and reasons. The entry must be between 8:00 a.m. and 8:00 p.m. on a day that is not a holiday or the tenant's day of worship.



So if my landlord doesn't like my looks or something, he or she can't come snooping in my apartment when I'm away?

That's right. While you're a tenant, the place you rent is your home. A landlord who enters illegally is a trespasser and can be taken to court.



- The landlord must give proper notice if there's to be a rent increase. For any periodic tenancy, proper notice is
 - 12 weeks in the case of a weekly tenancy
 - 3 months in the case of a monthly tenancy
 - 90 days in the case of any other periodic tenancy

If, in the lease, longer notice is required, this longer period is the time that must be allowed.

- The landlord must abide by whatever was agreed upon in the tenancy agreement.

The Tenant's Obligations



- The tenant must pay the rent on time. As you've read, the only occasion where a tenant can legally (and temporarily) withhold rent is where a landlord hasn't supplied him or her with a copy of the lease within 21 days.
- The tenant must prevent damage to the premises and keep them reasonably clean and safe. This means that unless the tenancy agreement states that the landlord will be responsible for repairs, it's up to the tenant to look after things in his or her home and get them fixed as necessary.
- The tenant must be considerate of the landlord and other tenants and must not do things that might endanger them.
- The tenant must not perform illegal acts or conduct illegal business on the premises.
- The tenant must abide by whatever was agreed upon in the tenancy agreement.

8. Ms. Fullerton converts her basement into a self-contained apartment complete with its own entrance. She rents the apartment out to Maud, an art student, but she becomes alarmed when she hears hammering coming from the basement one afternoon shortly after Maud has moved in. Waiting until Maud is in class one day, Ms. Fullerton lets herself into the apartment and is shocked to find a number of paintings on the walls, many of them unseemly in Ms. Fullerton's opinion. That evening she visits Maud and tells her she has no business making so much noise, putting nail holes all over the walls, and hanging up such "filth" in her house. She orders Maud to take the paintings down and never again to make such loud hammering noises.

Is Ms. Fullerton acting within her rights? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Before continuing with an overview of the basics of the next stage of a tenancy, once again, here is a chart-form summary of some of the most important obligations laid out in Alberta's *Residential Tenancies Act* that relate to the process of maintaining a tenancy:

During the Tenancy	
Party	Responsibilities
Tenant	<p>The tenant should</p> <ul style="list-style-type: none">• pay the rent on time• be considerate of other tenants• not endanger other tenants• not perform illegal acts or conduct illegal business on the premises• keep the premises reasonably clean and safe• prevent damage to the premises• move out when the rental agreement ends
Landlord	<p>The landlord should</p> <ul style="list-style-type: none">• ensure that the premises are available for the tenant when the rental agreement takes effect• ensure that the premises are habitable at the beginning of the tenancy• give proper notice if he or she wants to enter the apartment for repairs• not disturb the tenant's peaceful enjoyment of the premises

Going Further

If it interests you, go back now to the Canadian Legal FAQs site and check out topics related to maintaining a tenancy. Here, again, is the address of the page listing landlord/tenant topics:

<http://www.law-faqs.org/ab/landten.htm>



Moving Out

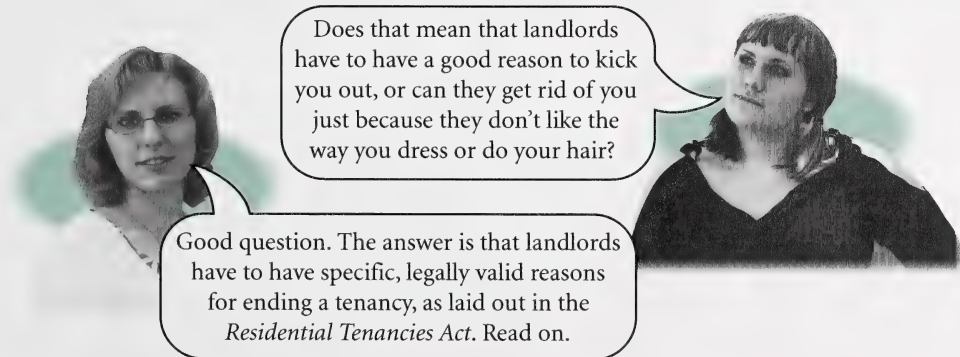


The period of tenancy is now coming to an end. This may be because the lease is up in a fixed-term tenancy, or it may be simply that you want to leave. On the other hand, it may be because your landlord wishes to evict you. The lists that follow run through both your obligations and your landlord's in a variety of scenarios.

The Landlord's Obligations

- If a lease is expiring and there's no provision in it saying that notice must be given, a landlord has no obligation. The tenancy simply ends and the landlord is free to rent the property to someone else. Of course, the tenant and landlord may negotiate a new leasing arrangement.
- If a landlord wants to end a periodic tenancy, proper notice must be given the tenant. Proper notice is as follows:
 - In the case of a weekly tenancy, a week's clear notice¹ must be given.
 - In the case of a monthly tenancy, 3 months' clear notice must be given.
 - In the case of a yearly tenancy, 90 days' clear notice must be given.

Notice must be in writing and signed by the landlord, and it must explain why the tenancy is being ended. It must give precise dates, and it should either be handed to the tenant personally or sent through registered mail.



¹ *Clear notice* means that the time period in question starts at the beginning of the next week or month, as the case may be. For instance, if three months' clear notice is given on June 12, the three months don't start until July 1.

- A landlord must have a valid reason to terminate a tenancy. Only the following reasons are acceptable:
 - The landlord wants to move into the premises or let a relative move into them. (This situation occurs most often when part of a house has been converted into an apartment and rented out and then the owner wants to take it back—perhaps to let an adult child or an aging parent move in.)
 - The landlord has sold the property to someone who wants to live in it him- or herself or wants it vacant.
 - The landlord wants to demolish the building or make such major renovations that the building has to be empty.
 - The landlord decides to use the premises for a non-residential purpose (such as setting up a business in it).
 - The premises belong to an educational institution (for example, it's a university residence) and the tenant ceases to be a student.
- If the tenant commits a “substantial breach” of the tenancy agreement, the landlord can evict him or her on short notice. A “substantial breach” is something like
 - not paying rent
 - seriously bothering or endangering the landlord and/or other tenants
 - engaging in illegal acts
 - seriously damaging the premises
 - not keeping the premises reasonably clean
 - not leaving when the tenancy agreement has expired

In these cases, 14 days' notice is all that's required to evict a tenant. If the situation is extreme, even this time can be shortened. For instance, if a tenant has taken to physically assaulting the landlord or other tenants, he or she can be evicted on a 24-hour notice (recently changed from 48 hours).

- Within a week, the landlord and tenant must complete a second inspection report to check for damage. Then, within ten days, the landlord must return the security deposit minus any money owing on rent or any money needed for repairs of damage done by the tenant.

If inspection reports weren't carried out, no money can be withheld for damage. And no money can be deducted for “normal wear and tear”—that is, for the natural deterioration that things undergo over time if they're being used in a reasonable manner.

The Tenant's Obligations

- If a lease is expiring on a fixed-term tenancy, the tenant can simply move out. Of course, the tenant might choose to negotiate a new tenancy agreement.
- If a tenant wishes to terminate a periodic tenancy, proper notice must be given. Notice must be in writing and identify precise dates. The time allotments for proper notice are as follows:
 - In the case of a weekly tenancy, a week's clear notice must be given.
 - In the case of a monthly tenancy, a month's clear notice must be given.
 - In the case of a yearly tenancy, 60 days' clear notice must be given.
- The tenant should complete a second inspection report with the landlord.



Question: What if you have a lease but you want to leave before it's up?

A lease is a contract, so it's legally binding. However, as with any contract, both parties can agree to cancel it; so the best thing would be to talk it over with your landlord. Most landlords will allow you to cancel a lease as long as they have enough notice to rent the place out. If they can't rent it, however, you'll likely be liable for any money the landlord loses. Another idea is to sublet the premises or assign your lease—options you'll be looking at shortly.

9. Mrs. Lupino buys a small house near a community college and rents it out on a monthly basis to Kofi, a student. A year later, Mrs. Lupino's daughter, Melanie, enrolls in the same college and wants to live in the house; but Kofi, who still has a year to go in his program, doesn't want to move. Mrs. Lupino insists that he leave and gives him three months' notice. Is Mrs. Lupino acting within her rights? Explain your answer.
10. Lorette loves to party. Night after night she cranks up the stereo, and she and her friends carry on noisily until 2:00 or 3:00 a.m. Other tenants all over the apartment building complain regularly, and Lorette's landlord has threatened her with eviction many times, but Lorette refuses to change her ways. Finally, her exasperated landlord hands her a written notice telling her to be out of the building in 24 hours or he'll get a court order to throw her out.
11. Juan and Eva are moving out of their apartment. After completing an inspection report with their landlord, they're informed that half their security deposit is being kept to pay for steam-cleaning the rugs and painting the walls. After four years in the apartment, their landlord says, things get dirty and someone has to pay for the clean-up.

Is this legal? Why or why not?

- What are Juan and Eva's rights in this situation?
12. Ms. Hum rents out the basement suite in her house on a month-to-month basis. When she goes to collect the rent one day, she discovers that her tenants have vacated without telling her they were leaving. Though she puts an ad for the apartment in the paper, it takes her a month to line up new tenants. When her old tenants contact her demanding their security deposit back, Ms. Hum says she intends to keep it to pay for their last month's rent.

Is Ms. Hum acting within her rights? Explain.

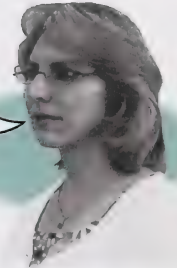
Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

mediate: as a neutral third party, to help two parties in a dispute resolve their differences



Okay, I now have some idea of my rights as a tenant; but, at a practical level, what do I do if they've been infringed? I mean, how can I make my landlord give back my security deposit if he or she refuses?

The first thing is always to try to work things out with your landlord. If that fails, you should contact the Landlord and Tenant Advisory Board in your area, if there is one; it **mediates** disputes between landlords and tenants.



And what if there's no such board where you live?



You can always apply to Small Claims Court (technically, the Provincial Court, Civil Division) for a court order to recover your money in many situations. If the matter is complex, or if it involves a large amount of money, you should consult a lawyer.

Before continuing with an overview of assigning and subletting, here's another chart-form summary of some of the most important obligations laid out in Alberta's *Residential Tenancies Act*. These obligations relate to the process of ending a tenancy:

Moving Out	
What Should Happen	Explanation
Proper notice must be given by the party terminating the tenancy in the case of a periodic tenancy. Normally, no notice need be given when a fixed-term tenancy ends.	The landlord or tenant (whoever is doing the terminating) must put the notice to terminate in writing. For month-to-month tenancies, the landlord must give the tenant three months' notice, while the tenant must give the landlord one month's notice. In a week-to-week tenancy, the tenant or landlord must give each other one week's notice.

A final inspection should be carried out and a report made.	A landlord and tenant should complete a final inspection of the premises within one week after the tenant moves out.
The security deposit should be returned to the tenant minus any legitimate withholdings.	<p>Tenants have a right to get their security deposits back within ten days after they move out. They should get the full amount of the deposit, plus any interest owing, if the following conditions are met:</p> <ul style="list-style-type: none"> • No damage has been done, beyond normal wear and tear. • The premises have been properly cleaned. • No rent is owing. <p>Otherwise, the landlord has the right to keep part or all of the security deposit to cover the costs, depending on the tenancy agreement.</p> <p>Note that if the damage exceeds the security deposit, the landlord can take legal action to claim for money needed for repairs.</p>

Assigning and Subletting

assign a lease: to turn a lease over to another person who will become the new tenant and pay rent to the landlord

sublet: as a tenant, to rent a premises (or part of it) to a third party who will pay rent to you



Earlier on, it was mentioned that situations might arise in which you, as a renter, may want to assign your lease or sublet your home. Both of these processes are ways of legally having someone else live on a rented premises and pay rent.

13. Suggest at least **two** situations in which a renter might want to make use of this sort of process.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

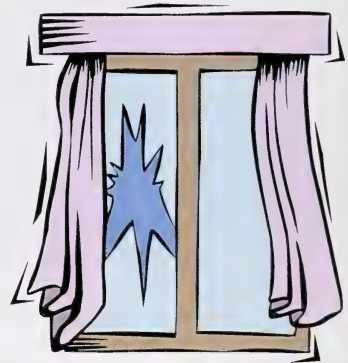


Despite their similarities on the surface, however, assigning a lease and subletting a premises are legally very different processes. To learn how they both work, open your textbook to pages 560 to 561 and read the material under the heading “Assignment and Sublet.” Skip over the case study on page 561. When you’ve finished the reading, answer the questions that follow.

- 14. a.** In your own words, explain the difference between assigning and subletting.
- b.** Which process would make more sense in each of the following situations?
- (1) A renter with a one-year lease lands a new job in another community and wants to move there right away.
- (2) A college student gets a summer job working up north, but wants to return to school in the fall. She’d rather not have the inconvenience of moving all her belongings twice and having to store them over the summer.
- 15.** Ryan assigns his lease, which has another eight months to run, to Martina. Martina pays rent to the landlord for the first three months, but then she loses her job and can’t keep up the payments.

Three months later, Martina leaves; but, before going, she smashes windows and mirrors all over the apartment in a fit of anger. She even puts a few holes in the walls. The landlord takes Ryan to court for the amount owing for rent and repairs.

Will the landlord likely be successful? Why or why not?



- 16.** Louisa asks her landlord if it’s okay for her to rent out her apartment to a friend—a very responsible person—over the summer months. Her landlord says no way—subtenants are nothing but trouble and he won’t have anything to do with them.

What, if anything, can Louisa do?

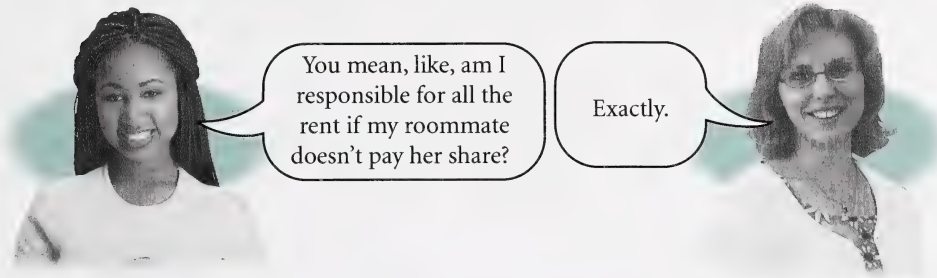
- 17.** You’re a tenant who wants to move out, but you have four months left on your lease. Would your first step be to try to assign your lease to someone else or to speak with your landlord about cancelling the lease? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Sharing Accommodation


When they first set out on their own, many young people share an apartment or even a house with one or more friends. That way, they can split the rent and other household expenses. Besides, living with friends can sometimes help soften the shock of leaving home.

You yourself may be contemplating this sort of arrangement in the not-too-distant future; you may even be sharing accommodation in this way already. But do you understand all the legal implications in this kind of setup?



joint tenancy:
a tenancy that
includes more than
one lessee

There are two ways you can go about sharing a place to live with friends. In one, called joint tenancy, all the people involved sign the lease; in the other, only one person signs the lease and everyone else simply lives with that person and contributes money toward the rent. To learn a bit more about this distinction, turn to your textbook and read the material under the heading “Joint Tenancy” on pages 549 and 550. Then answer the following questions.

- 
- 18.** Roy, Larry, and Krish decide to share an apartment. They enter into a joint-tenancy arrangement with a one-year lease, each roommate paying a third of the rent. However, after six months, Larry decides to move back home. Their landlord insists that even though Larry signed the lease, Roy and Krish will have to continue paying the rent in full. Is he within his legal rights? Explain your answer.
- 19.** The next year Roy, having learned his lesson, decides he's not signing any more leases. He finds another friend, Denzil, who's already signed a lease for an apartment, and moves in with him. The understanding is that Denzil will pay the full rent to the landlord, but that Roy will give Denzil his half of the rent money each month.
- Who is/are the official tenant/tenants in this arrangement?
 - If Denzil and his landlord agree at any time to cancel the lease, will Roy have a legal right to stay on in the apartment? Why or why not?
 - If Roy moves out, Denzil, as the official tenant, will still have to come up with the full rent. Suggest something Denzil might be able to do to protect himself against this possibility.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

One thing that can cause particular problems among roommates is the matter of security deposits. For instance, if there's a joint tenancy, the deposit is given by all the tenants. That means that when the time comes to get the deposit back at the end of the tenancy, the cheque will have to be made out in the names of all those who paid; and they'll all have to sign in order to cash it.

There's no problem if all the original roommates are still there, but if one leaves early, difficulties can arise. For instance, that tenant will undoubtedly want his or her share of the deposit back when leaving, but how can this be arranged? And when the tenancy comes to an end, it may not be possible to locate the person who left early so he or she can sign the cheque.

If you ever find yourself in a situation where problems like this can arise, it's always best to think about them ahead of time and agree upon solutions. You should probably discuss them with your landlord and arrange a way for the remaining tenants to buy out the security deposit of anyone who might leave. That way, the person leaving will get the money owing right away, and there's no problem for the remaining renters when the tenancy ends.

Of course, there are many other points that roommates have to work out if sharing accommodation is to run smoothly. For example, ways have to be developed for dividing up expenses—groceries, for example. Some people eat more than others, and people have different tastes and schedules. And what if the roommates have cable TV but one or more of them watch far less television than others?

Here's a short list of issues roommates generally have to work out:

- the division of household expenses like groceries, cleaners, and bathroom articles
- the cable bill, if there is one
- the various utility bills—heating, electricity, and perhaps water
- the phone bill
- the Internet bill, if there is one
- the responsibility for cleaning up and maintaining the home

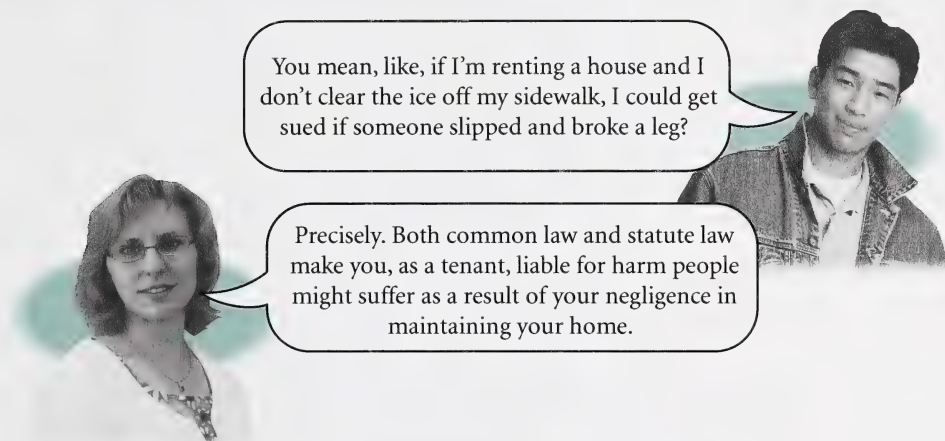
The important thing is to discuss these things freely and work out in advance ways of dealing with them. If you do things like opening joint bank accounts for shared expenses, keeping careful track of all long-distance phone calls, or setting up a “kitty” into which each roommate contributes so much each week for household expenses, a great deal of anger, frustration, and hurt feelings can be avoided down the road.



Occupiers' Liability

liability: legal responsibility for harm done to others

Before leaving this discussion of renting a home, there's one more topic you should think about—**liability**. In other words, you should consider what responsibilities you, as a tenant, will have in the eyes of the law for any harm suffered by others.



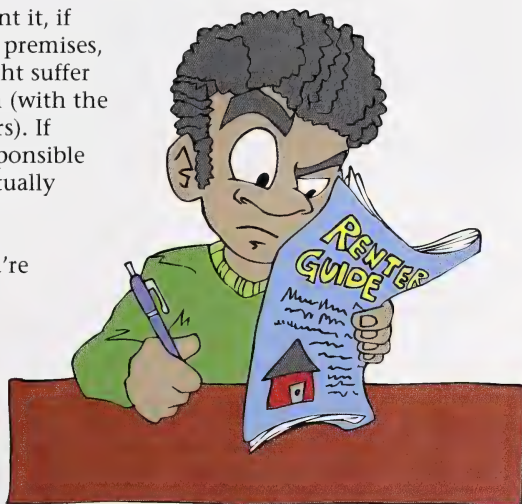
As you've seen, as a tenant you're legally responsible for any damage that occurs to the premises you're renting. The landlord can withhold money from your security deposit to pay for such damage; and if the cost of repairs is greater than this amount, you can be taken to court for the balance owing.

But as a tenant, your liabilities don't end with damage to the property; you may also be considered responsible for any harm people might suffer because of your negligence while on the premises.

Whether you own a property or only rent it, if you're the person legally occupying the premises, you're liable in law for harm others might suffer through your negligence while on them (with the exception, in Alberta, of adult trespassers). If you're renting an apartment, you're responsible only for the part of the building you actually occupy; the landlord is liable for harm people suffer in areas like halls and stairways. If you're renting a house, you're responsible for the whole property.

This type of responsibility is known as **occupiers' liability**, and it's something all renters and homeowners should be aware of. In Alberta, the *Occupiers' Liability Act* governs this area of law.

occupier's liability: the responsibility that legal occupants of a premises have to others who come onto the property



Going Further



If you wish to learn more about occupiers' liability, read the material under the headings "Occupiers' Liability" and "Occupiers' Liability Acts" on pages 348 to 351 of your textbook. Note that occupiers' liability is investigated in greater detail in Legal Studies 3040.

- 20.** Before wrapping up this lesson, test your mastery of the material you've been studying on landlord and tenant law by telling whether each statement that follows is true or false. When you've finished, be sure to go back and review any questions that you weren't sure of.
- a.** A landlord has the right to use money from a tenant's security deposit to clean or repair a premises that the tenant has left in a state that goes beyond what could reasonably be considered normal wear and tear.
 - b.** A landlord can enter a tenant's apartment to do repairs simply by calling up half an hour beforehand and announcing his or her intentions.
 - c.** A tenant with a month-to-month periodic tenancy can leave on a month's notice but can't normally be evicted on less than a three-months' clear notice.
 - d.** A tenant must get a landlord's permission to sublet an apartment.
 - e.** Assigning a lease ends a tenant's responsibilities to the landlord.
 - f.** A landlord can evict a tenant without having to give a reason as long as proper notice is given.
 - g.** Inspection reports are handy to have, but there's no legal requirement to complete them.
 - h.** In Alberta, there's no legal protection for landlords who discriminate against renters because of their skin colour or religious beliefs.
 - i.** A tenant who consistently harasses other tenants can be evicted on 14 days' notice.
 - j.** A tenant can withhold rent if a landlord fails to carry out needed repairs.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further

- Go once more to the Canadian Legal FAQs site and investigate topics related to landlord/tenant law that you haven't yet looked into. Here, once again, is the address to get you started:

<http://www.law-faqs.org/ab/landten.htm>

- Here's another website that offers excellent information on landlord and tenant law in Alberta. Now that you have a solid grounding, the material offered by this site will enable you to expand your understanding of landlord/tenant issues.

<http://www.acjnet.org/docs/landten/index.html>

- Another thing you might want to do is take a look at the *Residential Tenancies Act* itself. The following address will take you to the Queen's Printer's website.

<http://www.qp.gov.ab.ca/index.cfm>

Once there, click on "Catalogue" near the top left-hand corner; then, in the next panel, simply run a search for the Act. Eventually, you'll find a button saying "View text of this document"; it will take you to the document itself.

- Another option for quickly accessing practical landlord/tenant information is to use the Dial-A-Law service offered Albertans by Calgary Legal Guidance. Simply by punching in a number on a touch-tone telephone and following the recorded instructions, you can get access to all sorts of practical legal information. To contact Dial-A-Law, do the following:
 - If you live in Calgary, dial 234-9022. If you live elsewhere in the province, dial, toll free, 1-800-332-1091.
 - Follow the instructions you're given over the phone to get access to the information you want.

Here are a few rental law topics, along with their corresponding numbers, in the Dial-A-Law series that you might wish to listen to:

- | | |
|---------------------------------|--|
| – 710 Eviction | – 711 Moving into an Apartment |
| – 712 Renters' Responsibilities | – 713 Moving out of an Apartment |
| – 714 Shared Accommodation | – 909 Landlord Entrance Without Notice |

In this lesson, you've had a general overview of the legal basics of renting a home. If you took Legal Studies 1010, some of this material was already familiar to you, but a bit of refreshing never hurts. You may be closer now to becoming a renter yourself, in which case this material will be of more immediate use to you. If the time comes that you do rent your home, remember to take the steps that are necessary to understand just what legal rights and obligations you're taking on.

Assignment

Now open Assignment Booklet A, turn to the Section 1 Assignment, and answer questions 4 and 5.



Suggested Answers

1. No, leases needn't always be in writing, though they normally do have to be if the agreement is for a period of longer than three years. Leases for shorter periods can be verbal agreements, but it's usually safer to have a written document in which the rights and obligations of the lessor and lessee are clearly spelled out.
2.
 - a. This is a periodic tenancy after the lease has expired.
 - b. This is a tenancy at will.
 - c. This is a fixed-term tenancy.
 - d. This is a tenancy at sufferance.
3. No, Marni isn't right. Unless some stipulation is made in the lease, when a fixed-term tenancy expires, a landlord can insist that the tenant move out immediately.
4. Charts will vary. Compare yours with the one that follows.

Advantages of Signing a Lease	Disadvantages of Signing a Lease
<ul style="list-style-type: none"> • A lease provides security. • A lease stabilizes the rent. • A lessor and lessee can work out the details of a tenancy agreement in a lease. • A lease creates a framework for solving problems that might later arise. 	<ul style="list-style-type: none"> • A lease locks a tenant into an agreement even if he or she later wants to move. • If tenants sign a lease without carefully reading its terms or considering their implications, they may regret it.

5. Yes, Maria's rights have been violated. Her landlord should have applied for an official order to evict her; under no circumstances can he forcibly remove her. Among other things, Maria could press criminal charges for assault and launch a civil case for assault and battery.
6.
 - a. First, you should tell Curran that his security deposit is illegally high; according to the law, the maximum amount he can be charged is one month's rent, in this case \$600. As for the inspection report, Curran should insist on completing it with his landlord; that way, he'll be able to verify that any damage that has already been done to the apartment is duly noted. This way, he won't later find himself in a position where he's asked to pay for it.
 - b. Curran can take his landlord to court to recover the expenses involved in spending three nights in a motel and storing his furniture. Of course, the best thing would be to try to work this out with his landlord first; but if this fails, Curran can commence a legal action in Small Claims Court (technically, the Provincial Court, Civil Division).
7. No, this isn't legal. While sexual orientation isn't explicitly included in *Alberta's Human Rights, Citizenship and Multiculturalism Act* as an illegal ground for discriminating against people, a ruling of the Supreme Court of Canada has stipulated that it must now be read into the statute—that is, the statute must be interpreted as though sexual orientation was included.

8. No, Ms. Fullerton isn't acting within her rights. In the first place, she has no legal right to let herself into Maud's home the way she did. In doing this, she committed trespass, and Maud could take her to court. As for the hammering, Maud has the right to lead a normal life in her home. If she consistently makes loud noises—especially during the night—her landlord can ask her to stop because, as a tenant, Maud has an obligation to be considerate of those around her. However, taking an afternoon to hang up pictures after moving into a home isn't being inconsiderate. Finally, as a paying tenant, Maud has a right (unless she and her landlord agreed otherwise in their contract) to hang up a reasonable number of pictures in her own home—pictures she wants on her walls. As long as the suite is rented out, Ms. Fullerton has lost the right to dictate how it's to be decorated.
9. Yes, Mrs. Lupino is acting within her rights. She's given Kofi the proper amount of notice, and she's legally allowed to ask him to leave to make way for a family member who wants to rent the premises.
10. No, this isn't legal. Since Lorette is seriously bothering the landlord and other tenants, her landlord could likely legally evict her with 14 days' notice for a substantial breach of the tenancy agreement; however, a 24-hour notice can be given only in an extreme situation involving something like assaults against other tenants.
11. After four years, it's to be expected that carpets would need cleaning and walls painting. The courts would probably consider this normal wear and tear; and, according to the *Residential Tenancies Act*, money from a security deposit cannot be used to pay for things like this. It's possible, however, that in their tenancy agreement, Juan and Eva agreed that their security deposit could be used to have their carpets cleaned and their walls painted on leaving.
12. Yes, Ms. Hum is acting within her rights. Her tenants had an obligation to give her a month's notice; this is to give the landlord a reasonable time in which to line up new tenants. Ms. Hum took immediate action, but replacing her tenants still required a month; therefore, she can keep the security deposit (which can't be any more than a month's rent) to cover her losses.
13. Answers will vary. Following are three situations, though you may have thought of others.
- A renter may be in a fixed-term tenancy and suddenly want to move. Finding someone who would move in and pay rent until the lease expires would be helpful in this situation.
 - A renter may want to leave his or her home for a few months and then return. Students who get summer jobs in other communities often find themselves in this situation. If they can get someone to move in during the summer and pay the rent, they can afford to keep the premises and save themselves the problems involved in moving out, storing furniture, and finding a new place in the fall.
 - A renter may find that he or she has difficulty paying the rent or simply that the rented premises are too large. In this case, the renter can sublet part of the rented property to another tenant. A person renting a house, for example, might sublet a basement suite in this way.

Did you think of other situations?

- 14. a.** If you assign a lease to another person, that person becomes the tenant and the original tenant has no right to return. There's now a contract between the landlord and the new tenant; though if the new tenant fails to pay the rent or damages the property, the original tenant can be held liable.

By contrast, if you sublet a premises or part of it, you remain the tenant, but a new landlord/tenant contract is created between you and the new party. You still owe rent to your landlord, and your tenant owes rent to you (though normally this rent is paid directly to the original landlord). Since you're still the landlord's tenant, you're still legally responsible for the premises.

- b. (1)** In this situation, assignment probably makes more sense because the renter has no desire to move back.
- (2)** In this situation, subletting makes more sense because the student wants to move back in a few months.
- 15.** Yes, the landlord will likely be successful since in an assignment the original tenant remains ultimately responsible for the entire lease.
- 16.** Louisa can apply to the courts for permission to sublet her apartment to her friend. According to the *Residential Tenancies Act*, "A landlord shall not refuse consent to an assignment or sublease unless there are reasonable grounds for the refusal."
- 17.** Your first step should be to speak to your landlord. Chances are that if you give enough time to re-rent the premises, your landlord will allow you to cancel the lease. That way your landlord has more control over who will rent the property, and the complications that might arise in the case of subletting or assigning can be avoided. This will benefit you because there's no chance that you'll end up being held liable for rent owing or damage done by the new tenant.
- 18.** Yes, the landlord is within his rights. In a joint tenancy, all the parties signing the contract are liable for all the rent. The legal expression used to convey this is that joint tenants are "jointly and severally liable."
- 19. a.** The only official tenant here is Denzil.
- b.** No, Roy will have no rights since he isn't a party to the tenancy agreement.
- c.** Denzil might sublet part of the apartment to Roy. This would set up a legal contract between them that Denzil could enforce through the courts if necessary.
- 20. a.** True
- b.** False (The landlord should give written notice at least 24 hours before the time of entry.)
- c.** True
- d.** True (The landlord, however, cannot deny the request without a good reason.)
- e.** False (If anything happens during the remainder of the tenancy that prevents the landlord from collecting money owed by the person to whom the lease is assigned, the landlord can claim it from the original tenant.)

- f. False (The landlord has to have a reason stipulated in the *Residential Tenancies Act*; for instance, the landlord might be selling the premises to someone who wants to live in them.)
- g. False (Under the *Residential Tenancies Act*, these reports must be done within a week of the tenant's moving in and out.)
- h. False (The *Human Rights, Citizenship and Multiculturalism Act* makes both these grounds for discrimination illegal.)
- i. True
- j. False (The only time a tenant can legally withhold rent is when the landlord hasn't supplied a copy of the lease within 21 days of signing.)

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Section 1 Conclusion



In Section 1 you've learned how the law divides property into two types—personal property (or chattels) and real property. You then went on to look at some of the legal aspects of renting (or, in the case of some bailments, borrowing or lending) both personal and real property. Lesson 1 consisted of an examination of the laws involved in bailments, while Lesson 2 focused on the legalities involved in renting accommodation.

Now that you know many of the legal basics of renting property, it's time to look at another aspect of property law—home ownership. It's this that you'll be investigating in Section 2.

SECTION 2

Buying or Building a Home



If you've bought a house but financed the purchase by getting a mortgage from a bank, who really owns the property—you or the bank? If you own property and a stream flows through it, do you have the right to dam up that stream—thereby denying the farmer who lives next to you water he needs for his cattle? If you own a home and want to sell it, do you have to use the services of a real estate agent? A lawyer? A surveyor?

You'll look at questions like these in Section 2. When you've finished the section, you should be able to describe the basic rights of a property owner, explain the processes involved in buying and selling property, and identify some of the basic legal aspects of building a home.

Lesson 1: Owning Land



As a high school student, chances are you'll be renting a place to live before you ever think seriously of owning your own home. Nevertheless, you may hope someday to become a landowner. It's possible that you're planning to become a farmer or rancher, in which case you could end up owning a great deal of land indeed. In this lesson, you'll be looking at just what it means to own land in Alberta.

Interests in Land

Property, as you learned in Section 1, is legally of two types—personal and real. Real property includes land and the structures attached to it—trees, buildings, wells, and so on. It also includes the space above the surface of the land and whatever lies below it. The traditional legal principle is that an owner of real property possesses “everything up to the sky and down to the centre of the earth”; though, as you'll see, this principle has been modified in modern times.

It may surprise you to learn that in Canada no one really *owns* real property at all. It all belongs to the Crown—in other words, to the country itself, personified by the king or queen. Parcels of this land are then granted to individuals, whom we usually speak of as the owners of that land. Technically, however, these people have what are better called *interests* in the land—the right to do things like live on it, use it, sell it, and pass it on to heirs. If a person who “owns” land in Canada dies with no heirs, his or her lands revert back to the Crown.

1. You've probably heard people speak about *Crown land*. Basing your answer on the preceding discussion, what do you suppose Crown land actually is?

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

Estates

Interests in land come in several different varieties. The two main ones—the ones we ordinarily speak of as ownership—are called estates. There are two principal types of estates:

- fee simple estates
- life estates

estate: *an interest a person has in land*

fee simple
estate: *the largest collection of rights a person can have in real property, giving the owner title to the land*

life estate: *an interest in land lasting only for the lifetime of the owner*

title: *what is ordinarily called ownership of land*

Fee simple estates are what most people who claim they own land actually have. Someone with a fee simple estate has title to the land involved. Title gives that person the right to live on the property, build on it, rent it out, sell it, give it away, and pass it on to his or her heirs. If your family *owns* their home, what they likely have is a fee simple estate.

Life estates are far less common. A life estate is usually created when a person with a fee simple estate dies and in his or her will grants a life estate in the land to someone else—usually a spouse. A person with a life estate has the right to do many things a person with a fee simple estate can do; but, when he or she dies, title passes to someone else named in the will.

So let's say Mr. Turnbull has title to some land. In his will, he leaves a life estate in the land to his wife; but, when she dies, the will gives the land to Mr. Turnbull's daughter in fee simple. Mrs. Turnbull can use the land until she dies, but then it goes to the daughter.



So that means that Mrs. Turnbull can't sell it or give it away—right?



Right, at least not without consent of the daughter, who has what's called a *future interest* in the land.

2. Suggest a reason, perhaps by way of example, why a person writing a will might want to pass on a life estate in land rather than an estate in fee simple.

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.



Other Kinds of Interests

Though estates are the most common kinds of interest in land, people can have other sorts of interests. Two of them you may be aware of, even if the legal names sound unfamiliar, are

easement: *an interest in land that gives a person certain rights over land to which someone else has title*

restrictive covenant: *an agreement that restricts the way a person with title to land can use that land*

- easements
- restrictive covenants

An easement gives someone who doesn't have title to a piece of land the legal right to use the land in a specific way. The most common type of easement is a right of way. Someone, for example, may have a legal right to cross a neighbour's land to get to a nearby lake or river. Other types of easements may involve the right to bury cable across a property or even the right to allow the branches of a large tree to extend over the property line.

What happens if you have title to a piece of land on which your neighbour has an easement and you sell the land to someone else? The answer is that the easement stays put; it's attached to the land. The new titleholders will have to recognize the right of the neighbour to use the land in the prescribed way.

For that reason, easements are something you have to look into when buying property. You don't want to pay good money for a cottage, for instance, only to learn afterward that your neighbours have the right to park their vehicles on your lawn.



In Alberta, easements must be expressly granted; but in some provinces, a person can create an easement simply by openly using someone else's land for a specific purpose for 20 years. A farmer, for instance, who for 20 years walks his cattle across a neighbour's field to water them at the river, can create the legal right to go on doing this—even if the neighbour wants to end the practice.

Restrictive covenants are a way someone without title to land can, in part, control how the land is used. Normally, they're created when someone with title to a piece of land sells it or gives it away. That person may be able to stipulate that the land not be used in a specific way by future owners. A farmer selling a small parcel of land to be converted into an acreage, for instance, may put a restrictive covenant in the sale agreement stipulating that the land not be used for commercial purposes. That way the farmer can rest assured that he—or she—won't wake up one morning to find a go-kart race track being set up next door.



3. The Thatchers have an easement guaranteeing them access to, and use of, an artesian well on the Paziuks' farm. When the Paziuks sell their farm to the O'Briens, Mr. O'Brien, who now has a fee simple estate in the farm, tells the Thatchers that they're no longer welcome on the land and that they'll be taken to court for trespass if they ever try to use the well without permission.

Are the O'Brien's within their rights here? Explain your answer.



4. The Herzogs have decided to sell the part of their farm that borders a lake to a local developer with the intention that the developer will create small residential acreages along the lakefront. However, the Herzogs are worried that after they lose control of the land, a noisy commercial development of some sort will be set up on it. As a Legal Studies student, what advice would you give to the Herzogs?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further

If you wish, you can learn more about easements and restrictive covenants from this website address:

<http://www.law-faqs.org/ab/realg-04.htm>

Co-Ownership



tenant in common: *someone who owns land along with one or more other parties and who may pass on his or her interest in the property in a will*

joint tenant: *someone who owns land along with one or more other parties and who cannot pass on his or her interest in the land in a will*



Imagine you're married and you and your spouse have decided to buy a home. Would you want the title of the property to be in either your name or your spouse's—or would you want it in both your names? The usual response to that question nowadays is that both spouses should share the ownership; after all, if things ever went wrong in your marriage, you wouldn't want your husband or wife to be able to sell your home out from under you, would you?

In fact, two or more people can have title to a piece of land. There are two ways they can do this: they can become either **tenants in common** or **joint tenants**. Don't let the word *tenants* confuse you here; this has nothing to do with renting property. It comes from the French verb *tenir*—to hold. A tenant is one who holds property.

When two or more people own land as tenants in common, they have equal title to it. They can both use it; and, if it's rented out, each is entitled to half the profits (unless they agree among themselves to share things differently). Any tenant in common can sell or give away his or her interest in the land or pass it on in a will. The person who receives the interest becomes a new tenant in common.

Joint tenancy works much the same way, with one important difference. A joint tenant can't will his or her interest in the land to an heir; as soon as a joint tenant dies, the other joint tenants automatically acquire that person's interest in the land.

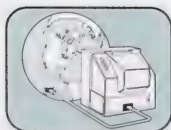
5. This may sound a bit complex, but there's a good reason for allowing some people to acquire land as joint tenants rather than as tenants in common. If you were married and buying a home with your spouse, would you rather be a joint tenant or a tenant in common? Give reasons for your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



Remember, if you want to own land as a joint tenant, you have to make this clear, and the title deed must state that the owners are "joint tenants." Otherwise, you'll end up as a tenant in common.

Going Further



To learn more about joint tenancy and tenancy in common, take a look at this Internet website:

<http://www.law-faqs.org/ab/realg-09.htm>

Protection for Spouses

Earlier on, it was suggested that as a spouse you wouldn't want your husband or wife selling your home out from under you. In Alberta, laws do exist to protect the interest of married people in their homes. The two principal statutes of this sort are the *Dower Act* and the *Matrimonial Property Act*.



The *Dower Act* gives each spouse the right to prevent the other from selling the **matrimonial home** or disposing of it in any way (such as giving it away or bequeathing it in a will) without his or her consent. This is true even if the property is registered exclusively in the name of the other spouse. Each spouse, therefore, has the right to remain in the home after the death of the other. This statute was first passed to ensure that wives and widows would continue to have a place to live in even if their husbands tried to otherwise dispose of their homes. It harks back to a time when it was usual for all of a family's real property to be registered in the husband's name; but it still has legal force today.

The *Matrimonial Property Act* comes into play when a marriage is ending in divorce. In deciding which spouse gets what, judges can use provisions in the *Act* to allow one spouse to get exclusive possession of the home and remain in it for a number of years, even if it's legally in the name of the other.

6. Suggest a reason why the *Matrimonial Property Act* would allow a spouse who doesn't own a home to stay in it after a marriage has ended.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Going Further

- You can learn more about rights granted in the *Dower Act* at this website:

<http://www.law-faqs.org/ab/realg-10.htm>

- Recently, another statute entitled the *Adult Interdependent Relationships Act* was passed in Alberta. This statute extends the protection granted spouses in the *Matrimonial Property Act* (but not that granted by the *Dower Act*) to some cohabiting couples. If you take Legal Studies 1010 or 2010, you can learn a good deal about the protection offered by this statute, but if you'd like to learn more right now, the following website can help you. Once there, click on the topics that interest you.

<http://www.law-faqs.org/ab/inter.htm>

matrimonial home: the home in which a married couple lives



Condominiums

You're probably very familiar with the idea of condominiums, but this type of property ownership is, in fact, relatively recent. Most modern condominiums are physically like apartments—separate units in a relatively large building; unlike apartments, however, condominiums are separately owned, not rented.



7. Suggest a reason why this form of property ownership presents something of a problem legally.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

If, in answering question 7, you pointed out that buildings of this sort often involve many different, separately owned units stacked vertically over the same piece of ground, you were right. The problem is solved, however, by the fact that, as you'll recall, property ownership extends down to the centre of the earth and up to the sky. If property can be divided into smaller units horizontally, it was decided that it could also be divided vertically.



So you mean if I own a condo on the 18th-floor of a building, I own the air space at that level, and the people above and below me own the space at their levels? That's weird.

It does sound strange, all right, but that's the way it works. You're all on the same plot of ground, but you own different levels above the plot.



Condominiums present another problem, too. Parts of a condominium complex—things like halls, lobbies, and recreational areas—are there for everyone to use. That means that when you buy a condominium, you normally obtain exclusive possession of the actual unit in which you live, and you own the common areas as a member of the condominium corporation, which makes decisions by majority vote.

Because this type of property ownership is relatively new, but extremely popular, all the provinces and territories have passed legislation to set the rules. In Alberta, the statute in question is the *Condominium Property Act*.

Landowners' Rights and Obligations



So you've bought a home—or, to be more exact, you've acquired an estate in fee simple in a piece of land. You've been careful to make sure that no one else possesses any interests in the land: there are no easements—or none that you can't live with—and no restrictive covenants. The land is yours to do with whatever you want, right? Well, not exactly. Property ownership certainly gives you a substantial bundle of rights in the land, but it doesn't mean you can do whatever you want with it.

Just what restrictions are there on what you do with your property? Can you convert a lot in a residential part of town into a parking lot? Can you let your front lawn grow into a jungle and collect heaps of rusting car parts in the backyard? Can you build a fence so high your neighbours have no more light coming through their dining-room window? Can you build an authentic log cabin in your exclusive neighbourhood of "executive homes"? Can you pollute the stream running across your farm so badly the farmer downstream can no longer use the water?

The answer to all those questions is probably not—depending in some cases on zoning laws. Along with your rights as a landowner, there are quite a few restrictions on what you can do with your property, depending on where you live. Some of them have developed over the years as the common law has evolved, while others have resulted from recent legislation designed to cope with the complex property issues of modern times. What follows is a discussion of some of the most important rights and obligations of landowners.

The Right to Support

Imagine that you own a plot of land and you've built your dream home on it. One day you wake up to find your neighbour out with his backhoe digging a major excavation right by the property line and a few yards from your home. As the hole deepens, your own land suddenly begins to cave in beside it, threatening your foundations. Your neighbour hasn't touched your property, but he has damaged it. Have you any legal right to stop him?

The answer is yes. As a landowner, you have what's called the "right to support"—in other words, the right to have your neighbour's land continue to support yours as it has done in the past. Of course, the flip side of a right is an obligation, and as a landowner you also have the obligation to your neighbours not to do anything with your land that would interfere with their right to support.

8. Ms. Bondurant builds a house near the edge of her property even though she's been warned the ground isn't stable there. When she discovers the earth on your property next door slipping away into a natural sinkhole in a way that threatens her house, she tells you you'll have to fill it in or she'll take you to court.

Do you have an obligation to support Ms. Bondurant's land here? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

The Right to Game

As a landowner, you may have the right to fish and hunt game on your land. However, like anyone else in the province, you must follow provincial hunting and fishing regulations. In other words, just because it's your land, you can't go out and shoot a moose in the off-season. And, if your land is a lot in an urban subdivision, don't try blasting away at that skunk raiding your garbage can.

Water Rights

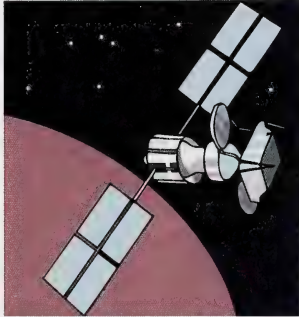
You've already been asked to think about your rights to dam up or pollute a stream that runs through your land. As a landowner, you can use water that flows through your property as you choose, as long as you don't interfere with your neighbours' rights to have the water take its natural course through their property. That means you can drink it, water your livestock with it, irrigate your crops with it, even divert it—as long as it resumes its original course before leaving your land and continues in a natural state. The people downstream from you have the right to have the water flow through their land in an unpolluted state and in a substantially unreduced flow.



9. The Mas have a natural spring on their land. The water bubbles up from beneath the ground and flows along a channel it's created for itself onto a neighbour's property. Mr. Ma has had a dugout made next to the spring. The spring can fill the dugout, and the water is used for the Mas' sheep; but now there's none left to flow onto the neighbour's farm. Are the Mas acting within their rights? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Air Space



Remember the legal principle that if you own land, you own the space above that land up to the sky? That principle was developed many years ago when the only air-space problems people had to deal with involved trees and buildings jutting over the boundaries that divided one person's land from another's. But what about that jet plane flying so far overhead you can barely see it? And what about that telecommunications satellite orbiting Earth? If you could somehow prove that at some point these things had passed directly over your property, could you commence a legal action for trespass?

The answer, as you probably guessed, is no. It would be impossible to enforce this sort of right today, and it would lead to untold complications. And, what's more, something flying that far overhead can in no way interfere with your right to enjoy and make use of your property.

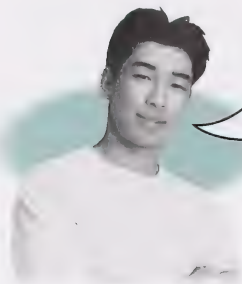
For these reasons, statutes have been passed to limit the air-space rights of property owners. Nevertheless, owners still have rights over the space immediately over their land; if your neighbour tries to string an electrical wire over your plot or if he or she has a tree whose branches project into your air space, you still have the right to take legal action.

Mineral Rights

If you own your land up to the sky and down to the centre of the Earth, that should mean that you have the right to remove any minerals on your property and use or sell them. This is, in fact, the case according to common-law principles, but it doesn't always work this way today. In some provinces, (Alberta being one of them) the rights to minerals and petroleum don't legally belong to the landowner (though there are a few exceptions). Rather, the government reserves to itself the right to these products.

In Alberta, this fact is especially important in relation to the petroleum industry; the Alberta government gives the rights to mine oil and gas to petroleum companies by way of special grants. Landowners are compensated financially when petroleum companies move onto their property to extract oil and gas, but the products themselves don't belong to the landowners.

Expropriation



My aunt owned a home in the city, and the municipal government decided to widen the street she lived on. They forced her to sell her house to the city so they could demolish it to make way for the road. How can they do that if my aunt owned the property?



Remember, it's really the Crown—or the government—that owns the land. Your aunt may have had a fee simple estate, but the government always has the right to take back the land—even forcibly—if there's a good reason and if the owner is compensated. This is called the *right of expropriation*.

expropriation:
the act of legally
depriving a person
of his or her
property rights

Both the federal government and the Alberta government have passed an *Expropriation Act* setting down the rules and procedures involved in expropriating (taking over or taking away) property. When a government decides that it must expropriate, it offers the owner fair market value for the property. If the owner refuses to sell, the government can take the land anyway, determining what compensation the owner will receive.

Governments try to be fair when carrying out expropriations; it's seldom that a landowner is financially harmed this way. However, when people are attached to their homes and don't want to move, this sort of thing can cause hard feelings. Understandably, governments expropriate only as a last resort.



- 10.** Suggest **three** or **four** reasons why a government might be forced to expropriate land.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Zoning and Building Bylaws

You've no doubt noticed—though you may never have thought much about it—that neighbourhoods tend to have buildings of the same sort in them. It's not often anymore that you can walk along a street and pass houses, stores, factories, and offices all on the same block. That's usually because of zoning regulations passed by the municipal government.

bylaw: a law passed by a municipal government

Zoning regulations are simply **bylaws** that say what sort of building can go where. If you buy a home, you'd probably prefer that there were other homes around it. You'd most likely want a quiet neighbourhood where you could live peacefully, get to know your neighbours, and perhaps raise a family.

You probably wouldn't, then, want a nightclub going in next door and an all-night truck stop being set up across the street. Zoning laws see to it that some neighbourhoods are residential, some commercial, and some industrial. Along with zoning bylaws, municipalities also pass building bylaws, regulating such things as the size and quality of buildings. Bylaws like these help keep towns and cities orderly and they improve the quality of people's lives.



- 11.** Most people regard zoning and building bylaws as very important. As much as commercial activity is needed in any community, most people prefer not to live surrounded by factories and warehouses. On the other hand, it can be argued that laws of this sort interfere with people's right to use their property as they see fit. The person who wants to set up a small business in his or her home, for instance, may find that living in an area zoned as residential makes this impossible.

Likewise, it can be argued that building regulations interfere with ownership rights. If a landowner wants to live in a shack, why should others be able to insist that he or she build a far more expensive home that meets safety standards and looks just like all the other homes in the neighbourhood?

In a short position paper, take a stance on this issue and present it, backed up with clearly reasoned arguments. If you're working with a friend, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.

Nuisance

Imagine you've bought a home in a pleasant neighbourhood. You've invested a great deal of money, and borrowed a great deal more; but you figure it will be worth it because you've realized a lifelong dream—to own your own home.

Before long, however, troubles begin. Your neighbour on the left is an amateur carpenter; all day long, day after day, he hammers away and operates power tools in the driveway right next to your kitchen window, and the noise is driving you crazy. He stops in the evening; but his dog, tied up near your bedroom window, barks all night.

Then you discover that the neighbour on the right believes strongly in the merits of natural gardening. Truckload after truckload of manure arrive at regular intervals to be spread on her garden, making it impossible for you to sit in your own backyard without a gas mask. You speak with both neighbours, but nothing changes. What will you do?

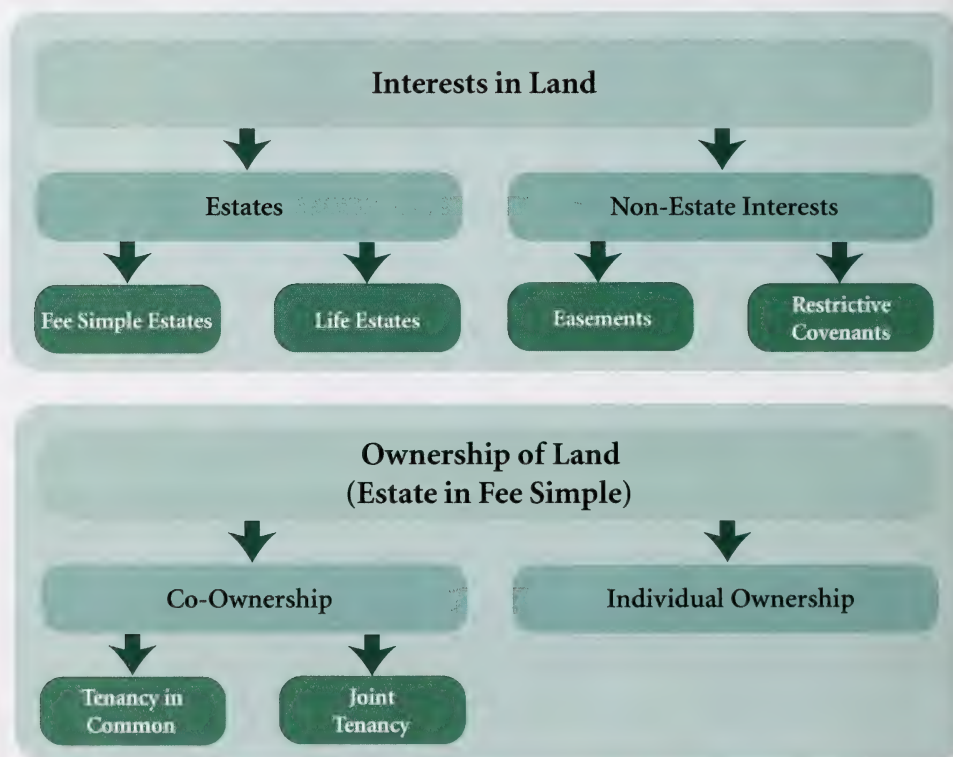


nuisance:
*interference
with another's
enjoyment of his
or her property*

According to the principles of common law, your neighbours may well be committing the civil wrong of **nuisance**. Your neighbours have the right to make reasonable use of their own property; but if, in the eyes of the law, they go too far and substantially interfere with your right to enjoy your own land, you can bring a successful legal action against them. Significant and frequent noises, vibrations, odours, and pollution are all possible grounds for commencing a suit for nuisance.

Of course, your municipality most likely has bylaws on its books about this same sort of activity, which would make it even easier to commence and win a legal action. Whether the protection comes from the common-law principle of nuisance or from local bylaws, it's important to remember that as a landowner your rights to make use of your property go only so far. When you start interfering with the rights of others, the law may step in.

And that's your look at some of the legal aspects of being a landowner. Before moving on to the next lesson, take a look at the two diagrams that follow; they're just a simple, visual way of summarizing two of the concepts discussed in this lesson. After looking at them, try your hand at creating a similar visual representation for question 12.



12. Now it's your turn. See if you can design a simple chart or diagram displaying the chief restrictions landowners have on their right to do as they choose with their own property.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

You now have covered the basics of land ownership, but what if you aren't a landowner and want to become one? How do you go about buying real property? And, if you do own land and want to sell it, what do you have to do? Transferring title to real property isn't as simple as buying groceries, but it's something many people find themselves doing from time to time throughout their lives. How to go about it is what you'll be looking into in the next lesson.

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 1.

Suggested Answers

1. Crown land is simply land that the Crown has never granted to anyone. No one can therefore be said to *own* this land other than the Crown.
2. Reasons will, of course, vary. Here's one scenario that sometimes occurs. Ms. Amundsen has a fee simple estate in a home that's been in the family for three generations. Ms. Amundsen's husband has died, and she wants to pass the house on to her son; but, late in life, she remarries a man who has children of his own. In her will, she grants her second husband a life estate in the house, but it's to go to her son when her husband dies. That way, if Ms. Amundsen dies before her husband, he'll have a place to live for the rest of his life; but there's no possibility that he'll be able to pass the home on to his own children rather than Ms. Amundsen's son. The house will remain in the Amundsen family.
3. No, the O'Briens have no legal right to take this action. The easement stays with the land no matter who has a fee simple estate in it. If the O'Briens didn't want the Thatchers using the land, they should have made sure there was no easement attached to the land before they bought it.
4. The Herzogs would be well advised to set up a restrictive covenant to the effect that no commercial development will be carried out on the land in question.
5. Answers will vary, but most couples choose to be joint tenants. That's principally because if one of them should die, the other would automatically become the sole owner of the property. There would be no danger that anyone else could acquire the dead spouse's interest in the home.
6. This provision in the *Matrimonial Property Act* is a response to situations where, in the opinion of a judge, one divorcing spouse has a decidedly greater need of remaining in the family home than the other. A mother keeping custody of the children, for instance, may need the home more than her ex-husband, especially if her income is smaller. The *Act* allows a judge in this situation to let her remain in the home regardless of who technically owns it—perhaps until her children are grown or she's in a better position to support her family.
7. There are two problems with condominiums:
 - The separately owned units are frequently stacked one on top of another as in an apartment building. This means that many people must somehow have an estate in the same piece of land.
 - Condominium owners have sole ownership of their individual units but must somehow share ownership of common areas like lobbies and recreational areas.

8. No, you have no legal obligation in this situation since you haven't done anything to your land that denies Ms. Bondurant's land support. If your excavations had caused the sinkhole, the situation would be different.
9. It may surprise you to learn that the Mas are acting within their rights. This isn't a case where water comes from elsewhere and flows across the Mas' property; rather, it originates on their land as surface water. This means that the Mas can use it as they see fit, even if that means denying it to their neighbours.
10. Answers will vary. Compare your ideas with the list that follows:
 - A street or road is to be built or widened.
 - A utility line is to be installed.
 - An airport is to be built.
 - A hospital or school is to be built.

There are many other reasons for expropriations, but this short list should give you the idea. Remember, though, that if land is to be expropriated, there must be a valid reason in the public interest.

11. Papers will, of course, vary. This is an interesting issue, and good arguments can be presented on both sides. Most people agree that some zoning and building regulations are necessary in the public interest, but the question is how far they should go. In some "upscale" residential neighbourhoods, for instance, regulations are in place that dictate things right down to the types and colours of roofing and siding that can be put on houses. This ensures that no substandard housing will harm the tone of the neighbourhood and bring down surrounding property values, but it severely restricts homeowners' freedoms of taste and self-expression and can create monotonous uniformity in the housing of the neighbourhood.
12. Because this is a rather more complex issue than the ones illustrated in the diagrams that preceded the question, a chart would probably work better than a diagram. Charts will, of course, vary a bit. Compare yours with the one that follows. Note that this chart not only lists restrictions; it also offers brief explanations.

Restrictions on Landowners' Rights	
Support	Landowners cannot do anything that denies support to neighbouring land.
Water	Landowners cannot deny water flowing unpolluted in its natural course to downstream neighbours.
Air Space	Landowners cannot prevent planes, balloons, satellites, and other high-flying objects from flying across property.
Minerals	In Alberta, mineral rights remain with the Crown.
Expropriation	The government reserves the right to take land in exchange for fair market value if there is a valid reason.
Zoning and Building Bylaws	Buildings must comply with zoning bylaws and building codes.
Nuisance	Landowners cannot use land so as to substantially interfere with rights of neighbours to enjoy their land.

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Lesson 2: Buying and Selling a Home



So you want to become a homeowner! You've been looking at houses for sale in your area and checking out ads in newspapers and at online listings, and you think you just might be able to afford to buy your own home. But what do you do now?

You know that real estate agents are usually involved in property sales, but you aren't quite sure what they do. And haven't you heard somewhere that you shouldn't buy a house without a lawyer? And what about financing the house—just what is a mortgage and how do you get one?

It's questions like these that will be answered as you work your way through Lesson 2.

People Involved in a Real Property Transaction

A good place to begin your look at the process of buying or selling a home is with the people you'll probably be involved with. What follows is a list of the professionals you're likely to deal with in buying or selling land. After the list you'll find a brief discussion of each.

- a realtor
- a lawyer
- an appraiser
- a surveyor

Realtors

realtor: a salesperson who helps clients sell and buy real property

Realtors (or *real estate agents*) are in the business of bringing buyers and sellers together. People are free to sell their property without the aid of realtors, but most sellers choose to list their homes with a real estate agency. The realtor advertises houses listed for sale and brings prospective buyers to see them.

Normally, a realtor is paid by the seller (or vendor) of the property—not the buyer. Realtors are usually paid by commission—often 5 to 7 percent of the selling price. Today, some real estate agents do work for buyers rather than sellers. These agents don't list houses for sale; rather, they find out from their clients precisely what sort of place they're looking for and the price range they're in; then they arrange with other realtors to show their listed houses to their clients. When a sale is made this way, the listing agent, working for the vendor, splits the commission with the buyer's agent.

Not just anyone can set him- or herself up as a real estate agent. The term *realtor* can be used only by people belonging to the Canadian or Alberta Real Estate Association. To qualify for one of these associations, the realtor must pass a series of exams and be licensed.

Lawyers

In Alberta, people aren't required to use a lawyer to buy or sell real property, but it's usually advisable to do so. Each party—buyer and seller—should have a separate lawyer watching out for his or her interests. A lawyer will

- explain the legal technicalities in the transaction
- protect the interests of his or her client
- search the legal title of a property to ensure that the current owner has a fee simple estate in it and that any easements or restrictive covenants are brought to light
- ensure that legal title is properly transferred

Lawyers involved in property transactions should check all the papers involved, review any agreements before they're signed, and make sure that any provisions important to their clients are included in such agreements.



Appraisers

Most people who buy a home have to borrow money from a lending institution (such as a bank) by taking out a mortgage—something that will be discussed shortly. If the buyer should be unable to pay back the money owed, the lending institution's security is the property being bought. In other words, the lender can seize the property, sell it, and take back the amount it's owed from the money thus raised.

For this reason, it's important for the lender to make sure that the property can be sold for enough money to compensate it. That's where **appraisers** come in. They're people lending institutions use to prepare reports estimating the value of properties being mortgaged. Though it's the lender who insists on an appraisal being done, it's usually the purchaser who pays the appraiser.

appraiser: a person who estimates the value of real property

Surveyors

Lending institutions normally insist that any property being mortgaged be professionally surveyed to make sure that all the buildings are, in fact, within the property boundaries and in compliance with zoning bylaws. Professional surveyors are hired to do this job and to write their findings in what's called a **real property report**; and again it's the purchaser—the person taking out the mortgage—who normally pays for the service.

real property report: a report that includes a survey of a property and a description of the surveyor's findings

Going Further

Use the Yellow Pages for your area and see if you can find **at least one** of each of the following:

- a real estate agency
- an appraiser
- a surveyor
- a lawyer—preferably one specializing in real property transactions

Steps Involved in a Real Estate Transaction

Now that you know the players, it's time to look at what's involved when real property is bought and sold. The main steps are explained in the material that follows.

Listing the Property

If you're selling a home through a real estate agency, the realtor will get all the data—such as the house size, the number of bathrooms and bedrooms, the age of the house, its location, and so on. This information will then be made available to potential buyers.

There are two main types of listing agreements:

- exclusive listings
- multiple listings



Exclusive listings give the realtor the exclusive right to sell the property for a specified period of time. During this time, if anyone else—even you personally—sells the property, the realtor is entitled to a commission. And, even when the time period is up, if the realtor shows someone your home and that person ends up buying it, the realtor gets a commission.

Multiple listings enable many agents to pool their resources, so each one has a larger number of homes to show prospective buyers; however, they lose their exclusive right to sell your home. Realtors generally form an association (such as the Calgary Real Estate Board) to operate the MLS—Multiple Listing Service—for their members.

The Real Estate Purchase Contract

real estate purchase contract:

an interim agreement to buy a property, signed by both buyer and seller

When a potential buyer finds a house he or she likes, a **real estate purchase contract** (sometimes called an *offer to purchase* or an *interim agreement for sale and purchase*) is drawn up with the help of the realtor. A purchase contract is legally binding, and anyone who breaks it may be liable for losses suffered by the other party; therefore, it's always a good idea to consult with a lawyer before signing such a document. A purchase contract includes

- an identification of the property
- the price offered and the terms of payment
- the time within which the offer will remain open (If it's not accepted within that time, the offer is withdrawn.)
- the date of possession
- the things the buyer wants included with the property (for instance, the fridge, the stove, the swing set in the backyard)
- any conditions (or "subject to" clauses)
- a deposit to show that the buyer is sincere



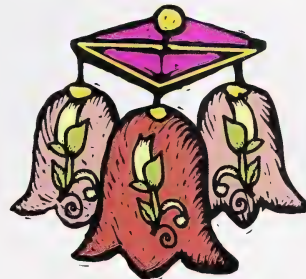
Could you explain those "subject to" clauses?

Normally, a purchase contract contains at least one condition—that the buyer can arrange financing, usually by way of a mortgage. That means that the offer is conditional upon the buyer's being able to raise the necessary money within a set time frame. This allows buyers to make an offer yet not be bound by the agreement if they simply cannot come up with the money. Another normal condition is that the seller has clear title, with no easements on the property.



The deposit has two functions: it acts as a partial payment of the purchase price and as a guarantee if the buyer fails to complete the purchase through his or her own fault. If that happens, the vendor can keep the deposit, though some would go to the realtor. In the meantime, the realtor or lawyer holds the deposit in trust.

If you were to examine a real estate purchase contract, you'd find that items the purchaser asks to be included in the sale are referred to as *chattels*—or personal property. That's because everything that's considered real property automatically goes along with the sale. Questions can arise, however, with things like light fixtures, attached mirrors, and other items that could be removed fairly easily. Are they chattels or part of the house?



1. Before reading on, how would you answer that question? Do you think a vendor has the right to take things like light fixtures, for example, if the buyer hasn't listed them in the offer to purchase? Why or why not?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

In answering the preceding question, if you said no, you were right. Anything attached to the land, or to anything else attached to the land, is called a **fixture**; and fixtures are considered part of the real property. A vendor who removes the medicine cabinets, light fixtures, attached mirrors, and other fixtures when leaving a property that's been sold is acting illegally. By contrast, appliances like fridges and stoves, though they're heavy, aren't considered fixtures. Still, just to be on the safe side, if you're a buyer and you'd really like to be sure a certain fixture stays with the house, it's a good idea to list it in the purchase contract.

The Title Search and Other Investigations

If you're buying a home and you've signed an offer to purchase, you—or, preferably, your lawyer—should begin a series of investigations into the property and its ownership. The first stop is with the Land Titles Office, which stores titles to all land in Alberta. The copy of the title stored there also shows all **encumbrances** against the land—things like easements for sewer or gas lines or rights of way as well as restrictive covenants or **caveats**. By checking the title, a lawyer can make sure that the vendor does, in fact, own the property and that no other parties that the buyer is unaware of claim an interest in the land.

At this point, the lawyer for the buyer should run a few more checks. Here are some of the things that should be investigated:

- that the property taxes have been paid
- that there are no liens or mortgages registered against the property (You'll understand this one better shortly.)
- that the property doesn't infringe any local bylaws
- that the utility bills have been paid

fixture: anything that is attached to real property

encumbrance: a claim or charge against a piece of land

caveat: a notice to all interested parties that the caveator claims some interest in a piece of land



What happens if, for example, there are taxes or utility payments owing on the property?

The lawyers must prepare a “Statement of Adjustments” that accounts for these things. For instance, each party will have to pay the taxes for the portion of the year he or she owns the house. Everything is worked out right to the penny.



Transferring Ownership

All your searches are complete and your financing has been arranged (something you'll be looking at shortly). The last stage of the process involves transferring ownership of the property.

For this to happen, a Transfer of Land document must be completed. The vendor's lawyer fills it out and delivers it to the buyer's lawyer on a “trust condition.” This means that no use will be made of the document until the vendor's lawyer has either received the money for the property or is satisfied that it will be paid.

If the buyer is financing the purchase through a mortgage, once the house is insured the mortgaging company advances the funds to a trust account set up by the buyer's lawyer. The “cash to close”—the purchase price minus the deposit—is then forwarded to the vendor's lawyer. When this lawyer acknowledges receipt of the money, the buyer's lawyer registers the transaction with the Land Titles Office. When this has been done, the deal is complete.

Breach of the Agreement

damages:
money awarded by a court to compensate a person for a wrong suffered

What happens if at any time after the offer to purchase has been made and accepted, one of the parties changes his or her mind? The fact is that a purchase contract is a legally binding contract, and the two parties must live up to the agreement. Sometimes, of course, this doesn't happen. What then?

If the purchaser defaults on the agreement, the vendor can keep the deposit and possibly do either of the following:

specific performance:
a legal remedy requiring a party who breaks a contract to complete his or her contractual obligations

- start a legal action against the buyer for **damages**—that is, for financial compensation for losses suffered due to the breach of contract
- start a legal action against the buyer for **specific performance**—in other words, have the courts force the buyer to go through with the deal

If the vendor defaults on the agreement, the purchaser can demand a full return of the deposit and possibly either

- begin a legal action against the vendor for damages
- begin a legal action for specific performance

2. Though the vendor and purchaser have three similar remedies available to them, most often they opt for the first. Suggest reasons for this.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Arranging Financing



Frequent reference has been made in this lesson to financing the purchase of a home; now it's time to look more closely at how this is done.

When people buy real property, they normally pay for it in one of two ways:

- They simply put down the cash and get title to the property as soon as the lawyers have done the paperwork.
- They borrow the money by obtaining a mortgage.

mortgage: a loan for the purchase of real property whereby the lender has a claim on the property until the money is paid

In actual practice, the second method is by far the most common; most people simply don't have the money needed to buy a house lying around.

A mortgage is a legal document that gives the party lending the money a claim on the property until the debt is repaid. In other words, if the money isn't paid back (with interest, of course), the lender can take over the property. The buyer of the property who takes out a mortgage to finance the purchase, is called the **mortgagor** and the lender is the **mortgagee**.

mortgagor:

someone who takes out a loan by way of a mortgage to purchase real property

mortgagee:

someone who lends money to another by way of a mortgage for the purchase of real property

There are three common methods of arranging mortgage financing:

Method 1: The purchaser assumes, or takes over, the vendor's existing mortgage and pays the vendor cash for the balance.

Method 2: The purchaser arranges new mortgage financing with a financial institution—usually a bank, a trust company, a credit union, or the Alberta Treasury Branch.

Method 3: The vendor agrees to mortgage part of the cost of the property him- or herself.



Don't be confused by all this. All Method 1 means is that if the person selling the house already has a mortgage—probably with a bank—the buyer just takes it over and keeps paying the bank. Of course, the purchase price is probably greater than the amount owing the bank, so the purchaser pays the difference directly to the vendor.



I think I understand the third method. Let's say I'm buying a house from you for \$130 000. I give you \$40 000, and you agree to lend me the rest in a mortgage. I make payments to you until the \$90 000 I owe, along with interest, is all paid back. If I can't keep up my payments, you can seize the property to get your money back.

Exactly!



3. Ms. Tymko owns her own home, but she still owes her bank \$80 000 on a mortgage. She agrees to sell the home to Mr. Landon for \$140 000. To finance the deal, Mr. Landon assumes Ms. Tymko's mortgage.
- How much cash will Mr. Landon have to give Ms. Tymko if this purchase is to go through?
 - To whom will Mr. Landon owe the remaining amount?
4. The deal between Mr. Landon and Ms. Tymko falls through because Mr. Landon was simply unable to come up with enough cash. Still hoping to sell her home, Ms. Tymko offers to become Mr. Landon's mortgagee herself if he can come up with 5 percent of the purchase price.
- In this situation, how much cash will Mr. Landon have to give Ms. Tymko?
 - To whom will Mr. Landon owe the remaining amount?
 - Aside from getting her house sold, what advantage might Ms. Tymko get from this arrangement?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

Most home buyers end up getting a mortgage through a financial institution—Method 2. In such a situation, the offer to purchase will be conditional on the buyer's ability to arrange a mortgage within a specific period of time (usually 21 days is the maximum allowed). During this time, the vendor cannot try to sell the property to anyone else.

Mortgages can be rather complex arrangements, and it's far beyond the scope of this course to discuss them in any depth. Basically, what happens is that the financial institution checks out the credit-worthiness of the purchaser to see if the risk of lending that person money is a good one. The buyer will be required to have a real property report made up and the value of the property appraised. The buyer will also be required to pay a certain percentage of the purchase price as a down payment—just to ensure that he or she is serious about making a financial commitment.



Interest rates and repayment schedules also have to be worked out. Rates vary with the term of the mortgage—the time period for which the mortgagee will lend money to the mortgagor without renegotiating the arrangement; rates can also change dramatically depending on the prevailing economic climate. They can vary slightly from one institution to another, as well, so buyers are well advised to shop around. The longer the mortgage is to last, the smaller the monthly payments will be; but the overall amount the mortgagor will eventually pay back will be greater—sometimes much greater.



The usual rule of thumb is to mortgage your home for the shortest time you can. As long as your payments are manageable, you'll save a lot of money in the long run by paying the loan off as soon as you can.

principal: an amount of money that has been borrowed (as opposed to the interest owing on it)

Both mortgagees and mortgagors have legal rights and obligations. Mortgagors have the right to clear title of their property once they've repaid the amount they've borrowed (the **principal**) along with interest. They also have the right to quiet possession of the property as long as they make their payments.

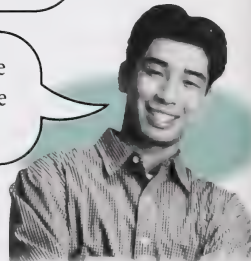
Mortgagors' obligations include making their agreed-upon payments, keeping their property in a state of reasonable repair, and insuring their home against such things as fire. After all, mortgagees wouldn't have any security for their loans if there were a risk that the homes they mortgage might burn down without any insurance coverage. Mortgagors also have an obligation to pay their property taxes and comply with things like zoning bylaws.

Mortgagees have the right to demand regular payments as agreed upon from mortgagors. Mortgagees don't have to accept speeded-up (accelerated) payments, though some do agree to this possibility in their mortgage documents. Others will accept such payments but impose a financial penalty on the mortgagor.



I don't get it. Why would someone who lends you money not want you to pay back the loan faster.

I know the answer to that one. The longer the mortgage lasts, the more money the lender gets in interest.



That's right. Which means that if you suddenly come into some money—perhaps through an inheritance—and want to pay off all or part of what you owe, your mortgagee might not let you—or might let you but impose a financial penalty. It's important to talk these things over before taking out a mortgage so you can learn just what your rights are.



What happens if a mortgagor is “in default” of the mortgage—a situation that most often arises when he or she isn’t keeping up with payments? It’s likely that the first thing the mortgagee will do is to try to renegotiate the agreement—probably so as to lengthen the duration of the mortgage, thereby decreasing the size of the payments to an amount the mortgagor can handle. If this fails, the mortgagee can do one of the following:

- demand full repayment of the mortgage—a request the mortgagor is unlikely to be able to fulfil
- negotiate a **quitclaim** with the mortgagor
- begin foreclosure proceedings

quitclaim: a mutual agreement whereby the mortgagor transfers his or her interest in the mortgaged property to the mortgagee

foreclosure: a procedure whereby a mortgagor’s right to a property is removed by a court order in favour of the mortgagee

A quitclaim is a mutual agreement whereby the mortgagor transfers to the mortgagee all of his or her interest in the property. A quitclaim will cancel the mortgagor’s debt, so the mortgagee can no longer expect payments to be made. For a quitclaim to be arranged, both parties must agree to it.

A foreclosure, by contrast, can be brought about without the consent of the mortgagor. In this case, the lending institution gets a court order to transfer title of the property from the mortgagor to itself, the mortgagee. The property is usually then sold and the proceeds are used to pay the lending institution the amount it’s owed, including interest and any costs incurred—for instance, court costs and realtor fees.

5. Quitclaims, as opposed to foreclosures, have both advantages and disadvantages for mortgagor and mortgagee. Make a chart like the one that follows, and see if you can fill it in by suggesting **one** factor for each box.



Quitclaim		
	Advantages	Disadvantages
Mortgagee		
Mortgagor		

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

Going Further

Check the business section of a major newspaper—like *The Calgary Herald* or *The Edmonton Journal*—for a listing of current mortgage rates. These rates aren't published daily, so you may have to look through a few back issues in your library or access an online newspaper. Then answer these questions:

1. Mortgage terms usually vary from six months to five years.
 - a. Do rates tend to be lower or higher when the term is longer?
 - b. Suggest a reason for this.
2. What institution currently offers
 - a. the lowest interest rate for a five-year mortgage?
 - b. the highest interest rate for a five-year mortgage?
6. Before going on to the next lesson, test your mastery of the process normally involved in buying real property by arranging the following steps in their usual order:
 - The buyer's lawyer carries out a title search.
 - The vendor accepts the offer to purchase.
 - The buyer goes to a lending institution to arrange financing.
 - Ownership in the property is transferred.
 - The vendor lists the property with a realtor.
 - The buyer makes an offer to purchase.
 - A survey and an appraisal are carried out.
 - The realtor shows the property to the buyer.
 - A statement of adjustments is drawn up.



Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



Going Further

- The following website address will give you more information on a number of topics discussed in this lesson. Bear in mind that this information is intended as practical advice for people actually buying or selling a home.

<http://www.law-faqs.org/ab/real-gen.htm>

- You can also learn more about buying and selling real estate from the Calgary Legal Guidance's Dial-A-Law series. Four recordings you might want to listen to are
 - 716 *Buying a House*
 - 717 *Selling a Home*
 - 718 *Foreclosure*
 - 719 *Quit Claims*

You've touched on a good many topics in this lesson, but you'll find there's a lot more to learn if and when the time comes for you to buy your own home. Just remember to take the time to learn what you have to know, and never be afraid to ask questions. If you go through a reputable realtor, he or she will be able to offer you help; but remember, the realtor will normally make money only if the sale goes through, so make sure you get a good lawyer to protect your interests. Buying property can be fun—but it's a serious investment; always go into it with your eyes wide open.

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 2.

Suggested Answers

1. The answer to this question is no. Anything attached to the house with nails, screws, glue, and so on, as well as anything built into the house such as a furnace, is considered part of the real property. Unless the buyer and seller otherwise agree, these things must legally stay with the land. This is explained next in the lesson.
2. Normally, the simplest thing for both parties in the case of a default is for the vendor to keep the deposit to help compensate for any lost time and selling opportunities. The other two remedies involve lawyers and perhaps a court case, all of which can be very costly and time consuming; and the outcome is never certain.
3.
 - a. Mr. Landon will have to give Ms. Tymko the difference between the purchase price and the amount left in the mortgage—\$60 000.
 - b. Mr. Landon will owe the remaining \$80 000 to whoever holds the mortgage he's assuming, most likely a lending institution such as a bank.

4. **a.** In this scenario, Mr. Landon must come up with \$7000—5% of the purchase price.
 - b.** Now Mr. Landon will owe Ms. Tymko, his mortgagee, the remaining \$133 000.
 - c.** Ms. Tymko can charge Mr. Landon the going rate of interest for a mortgage. In other words, she's made an investment of \$133 000 that will bring her a steady interest income. And it's probably a relatively safe investment in that if Mr. Landon can't keep his payments up, the house is there as a security. Of course, if Ms. Tymko got the whole amount in cash at the time of the sale, she could then invest it in some other way that might give her a higher return; so it's hard to say at this point whether or not this will turn out to be a wise move.
5. You may have found this difficult; filling in the chart asks you to go a bit farther than the information you've been given. Compare your chart with the one that follows.

Quitclaim		
	Advantages	Disadvantages
Mortgagee	faster, easier, and less costly than legal action for foreclosure	if house can't be sold for what mortgagor owes, can't go after mortgagor for the difference
Mortgagor	free of all financial obligations to mortgagee	may be required to move out of house immediately

6. The usual order is as follows, but remember that it's not written in stone. It's possible that the buyer might have his or her lawyer carry out a title search before arranging financing; but given the time limit normally allowed to finance the purchase, this isn't usually done. As well, the survey and appraisal might be done before or after the title search, and it sometimes happens that people wanting a house will arrange for a lending institution to pre-approve them for a mortgage up to a certain amount.
- The vendor lists the property with a realtor.
 - The realtor shows the property to the buyer.
 - The buyer makes an offer to purchase.
 - The vendor accepts the offer to purchase.
 - The buyer goes to a lending institution to arrange financing.
 - A survey and an appraisal are carried out.
 - The buyer's lawyer carries out a title search.
 - A statement of adjustments is drawn up.
 - Ownership of the property is transferred.

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Lesson 3: Building a Home



What appeals to you more: finding a house and property you like, buying it, and moving in—or buying an empty lot or parcel of land and building your own home?

Some people find the idea of building their own home overwhelming; but for others, it's the ultimate goal in home ownership. Finding—and perhaps creating—those perfect plans, locating just the right building site, and then watching their home go up is something they can dream about for many years.

You may well be one of those people who hope someday to build your own home. It's a goal worth pursuing, but remember that there are many things to consider before you put your plans into action. This lesson will touch upon a few of those things.

Going Further

Have any of your family members or friends been involved with building their own homes? If so, speak to one of them and find out what the experience was like. Ask questions like these:

- What legal hurdles did you have to clear?
- Did you do much of the work yourself, or did you contract it out?
- If you contracted it out, did you hire a general contractor, or did you do that job yourself?
- What were the biggest headaches involved in the process?
- Was the process worthwhile, or would you advise others to buy an existing home?

If you're thinking of building your own home, three things to consider are

- house plans
- building site
- financing

You might begin by acquiring the spot you want to build on, free of encumbrances, such as easements and restrictive covenants. You can finance your purchase by following the procedures outlined in Lesson 2. One thing you do have to be aware of, even this early in the process, is the existence of zoning bylaws and building codes in your area.

Zoning bylaws, as you'll recall, control land use. They may determine things like how tall or large your house may be or how close to the lot line you can build. As a builder, it's your responsibility to find out about the zoning bylaws in your area from City Hall or your local municipal office.

Building codes are in place in most areas—especially urban areas—to ensure that people building houses maintain an acceptable quality. They must be structurally safe, but they also shouldn't hurt the appearance of the neighbourhood and thereby bring down the property values of surrounding homes. They also shouldn't create any unnecessary hazards.

In order to assure the local municipal authorities that they aren't going to infringe the local building code, builders are required to present the municipal office with a full plan of what they're going to build. Once the plan is approved, a building permit will be issued and building can begin.



Sometimes plans aren't approved. Therefore, especially if you're buying expensive land to build on, you can make the purchase dependant upon the approval of the building permit. That way, if you can't build what you want, you won't be stuck with an expensive empty lot.

If you're taking out a mortgage to finance the project, you'll also have to satisfy the lending institution that the home you'll be building is up to its standards and will have a market value great enough for the lender to get back its money if it has to foreclose on you. If the lender approves the plans and becomes your mortgagee, it will likely insist on periodic inspections throughout the building process. Normally, money will be forwarded to you in instalments as the building goes on as long as the house keeps passing inspection.

Once your plans have been approved, you can proceed with your project in any number of ways. Three of the most common are as follows:

- You can simply start to build on your own—or perhaps with the help of friends and family. However, don't think you can just do whatever you want; municipal building inspectors, as well as electrical and plumbing inspectors, will be around at intervals to inspect your work and ensure that it's up to building-code standards. And, as you've already learned, if you've taken out a mortgage, an inspector will come around regularly from your mortgagee to make progress reports. Payments to cover future costs will depend on the quality of the work already completed. Inspections of this sort will be carried out even if you hire professionals to build your home.



- Another approach is to build part of the house yourself but to contract out some of the jobs. For example, you may feel that you can frame the structure with the help of a friend or two, but you'd rather get a professional to do the drywalling. As noted previously, no matter who does the work, inspections will have to be carried out by municipal authorities and your mortgagee.
- A third approach is to contract with a general contractor to do the entire building. This general contractor will then probably contract other people under subcontracts to do the various jobs—like putting in the foundation, installing the plumbing or wiring, framing the house, laying down flooring, installing kitchen cabinetry, and so on. In this situation, the general contractor is responsible to you, since you're the one he or she has made a contract with. The subcontractors are, in turn, responsible to the general contractor.

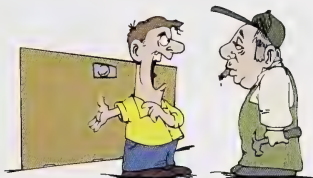
1. Miss Thorkelson buys a lot, acquires some house plans, and obtains mortgage approval. She contracts with a general contractor, the Build'em Right Company, to build the house and supply the materials.

One day, Miss Thorkelson notices a framing carpenter using substandard plywood for the sub-floor. She protests to the carpenter, but he tells her that his contract is with Build'em Right, not her. Moreover, he hadn't supplied the material; Build'em Right had.

What would you advise Miss Thorkelson to do? Give reasons for your answer.



Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



implied condition:
a term in a
contract that
hasn't been
precisely laid out
but is assumed by
both parties

If a homeowner hires a general contractor to build a house or a contractor to do any specific work, there's an **implied condition** that the workmanship and materials will be of good quality and suitable for the intended purpose. Nevertheless, it's important to make sure that the actual contract you sign says what you think it does; so it's always a good idea to have a lawyer read it over (building contracts don't have to be in writing, but it's wise to see to it that they are). A building contract should include

- a clear plan with all the specifics—including the materials to be used and the quality of the workmanship
- the completion date
- a statement explaining the contractor's warranty
- the dates when funds will be forwarded
- insurance while the building is under construction
- the total cost as well as an agreement on any extras
- penalties for failure to meet any contract terms



Something else home builders should be aware of is an Alberta statute called the *Builders' Lien Act*. This statute was designed to ensure that workers, subcontractors, and suppliers of building materials are properly paid for their services. Under the *Act*, anyone supplying services or materials for a construction project who hasn't been properly paid may, within 45 days of the completion of the job, register a charge, or lien, against the property in the Land Titles Office.

The *Builders' Lien Act* requires people having a building constructed by general contractors to withhold 10 percent of the contract price from the contractor for 45 days from the date the work was completed. This money will be used to pay workers and suppliers who haven't been paid and who have registered liens. If no one registers a lien, the 10 percent will be paid to the general contractor after the 45 days.



What happens if the amount owed to workers is more than the 10 percent that's been withheld? Will the homeowner have to cough it up?

No. Any homeowner who has properly complied with the hold-back requirements can't be held liable for claims beyond the 10 percent. Any worker, subcontractor, or provider of materials who's owed more will have to take legal action against the general contractor.



The *Builders' Lien Act* not only gives some security of payment to workers and suppliers, it also ensures that a fund of money is available to satisfy the claims of such people; this way the property won't be tied up unnecessarily with builders' liens. The *Builders' Lien Act*, by the way, doesn't apply only to buildings under construction; if you own a home and hire contractors to renovate it, liens can also be registered against your property for unpaid work.

2. You're building a home and you've arranged for Jiffy Construction ("The work may be iffy, but it's done in a jiffy") to act as your general contractor. You've agreed to pay \$75 000 to have the house built; this includes work and materials.¹
 - a. How much money will you be required to withhold from Jiffy when the house is completed?
 - b. Suppose within the 45-day limit, builders' liens totalling \$20 000 are registered against your home. How much money will you be required to pay the workers and suppliers who have registered those liens?
 - c. If, by contrast, no liens are registered, what will become of the money you've withheld after the 45-day period is up?
3. Ms. Cardiff is a cabinetmaker. She enters into a contract with Li's Construction to build and install the kitchen and bathroom cabinetry in a house being built for Mr. Sidhu. When the job is done, Mr. Li tells Ms. Cardiff that money is tight, but if she'll be patient, he'll pay her the amount she's owed within a few weeks. Two months after the house is completed, Ms. Cardiff still hasn't been paid. Giving up on Mr. Li, she goes straight to Mr. Sidhu, telling him she'll register a lien against his house for the money owing if he doesn't pay up right away.

Can Ms. Cardiff do this? In your answer, explain just what her legal options are.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

This lesson should have given you an idea of some of the legal issues involved in building your own home. If the time ever comes for you to build your own place, you'll find things get more complex than they may seem here. Even if you hire a general contractor, you'd be well advised to oversee everything yourself—just to make sure things are done the way you want them. Building a home of your own can be a very rewarding experience—as long as you're prepared to do some real work and go into it with your eyes wide open!

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment,
and answer question 3.

¹ In actual practice, things work rather differently than this question suggests as houses are normally built, and payments made, in stages. However, a somewhat simplified scenario gets the principle across without unnecessary complications.

Suggested Answers

1. Miss Thorkelson's contract is with the Build'em Right Company, so she should complain to that organization. If nothing is done to correct the flooring problem, she might have to take legal action against the company. It's up to Build'em Right to ensure that the flooring contractor is doing its job as contracted. If, as the carpenter says, the plywood was supplied by the general contractor, Build'em Right should pay the costs involved in replacing it. If the responsibility was subcontracted to the flooring contractor, that company or individual will have to pay the costs.
2.
 - a. You'll be required to withhold 10% of the cost, which is \$7500.
 - b. You'll be responsible for only the \$7500 that's been withheld. Anyone still owed money after this amount has been paid must take legal action against the general contractor.
 - c. If no liens are registered, after the 45 days are up you'll have to pay the general contractor, Jiffy Construction, the amount you've withheld.
3. No, Ms. Cardiff cannot do this. The *Builders' Lien Act* would have allowed her to register a lien against the property within 45 days of the completion of the job. Had she done this, she could have received the amount owing her from the fund created by the 10 percent Mr. Sidhu is required by law to hold back from Li's Construction. Now, however, that fund would have been handed over to Mr. Li.

Since Ms. Cardiff's contract was with Li's Construction, not with Mr. Sidhu, any legal action she takes will have to be against Li's for breach of contract; if she wins, she can get the money owing. It's likely that just the threat of such an action will convince Mr. Li to pay up and thereby avoid the expense of lawyer's fees and court costs.

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Section 2 Conclusion



In Section 2 you've looked into some of the legal aspects of home ownership. Lesson 1 gave you an overview of what it means to "own" real property in Canada, while Lesson 2 examined the basics of buying land in Alberta. Finally, in Lesson 3 you had a brief look at the legalities involved in building a home of your own.

While home ownership may not be uppermost in your mind at this stage of your life, it may become important to you as you get older. Of course, many people never buy their own homes; in fact, financial analysts say that for some people it doesn't make sense, even as an investment. Still, for many Canadians the idea of someday owning a place of their own remains an important part of their hopes and plans for the future. If the day does come when you do buy your own home, be sure you look into the purchase thoroughly and that you get the legal and financial advice you need.

SECTION 3

Consumers and the Law



Have you ever bought something only to have it fall apart the first time you used it? Or have you ordered something and found it wasn't anything like the model or sample you were shown at the store? If so, have you wondered just what your rights were as a consumer and what steps you should take to correct the situation?

In this section you'll be looking at some of the legal aspects involved in being a consumer. When you've finished the section, you should be able to explain the chief protections the law provides you as a consumer and identify specific pieces of legislation that provide this protection. And, if you choose to do Lesson 3—an optional lesson—you should also be able to describe the basics of another type of consumer transaction you're likely to make as you get older—financial investments—along with some of the laws that govern them.

Lesson 1: Common-Law Protection



Imagine that you're shopping for a new car. The salesman assures you the model you're looking at has a six-cylinder engine and four-wheel drive. Knowing very little about cars, you take him at his word and buy the vehicle. You pay for it and drive it off the lot, only to discover when you get home that it has a small four-cylinder engine and front-wheel drive. Legally, would you have any grounds to go back to the dealership and demand your money back?

If you answered yes, you'd be right. The law does offer protection to consumers in cases like this and in other situations where they'd otherwise be at the mercy of unscrupulous merchants. Most of the consumer-protection laws you're likely to encounter are in statute form; however, the common law offers consumers some help as well. In coming to understand what laws exist to protect you as a consumer, the best place to begin is with the common law. You'll be doing just that in this lesson. Then, in Lesson 2, you'll look at statute-law protection.

1. Given that the common law has evolved over hundreds of years while most statute law is relatively recent, why do you suppose that most laws designed to protect consumers are in the form of statutes?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



Contract Law

contract: a legally binding agreement between two or more parties

Most of the protection that the common law offers consumers lies in the law of **contracts**. Contract law is one of the major areas of legal studies. Of course, much of the law of contracts doesn't relate directly to consumer transactions; many contracts don't involve selling goods and services at all. Still, if you're to get good grounding in consumer law, it's important first to understand the basic protections offered by the law of contracts.

Your textbook has a good deal of material on contracts; you'll be reading much of it for this lesson. The emphasis for the purposes of this lesson will be on the protection the law of contracts offers consumers.

The Five Elements of a Contract

A contract is any agreement between two parties that the law will enforce. Not all agreements are contracts; to be an enforceable (or valid) contract, an agreement must have five essential elements. They are as follows:

- a genuine offer and acceptance
- consideration
- legal capacity
- genuine consent
- lawful purpose

Here's a brief explanation of these five elements:

offer: a proposal to enter into a contract

acceptance: the assent to a definite offer

- **Element 1:** There must be a genuine **offer** and a genuine **acceptance** of that offer. The offer must be clear, exact, and intended seriously as an offer. The acceptance has to be unqualified and clear, and it has to agree with the precise terms of the offer.



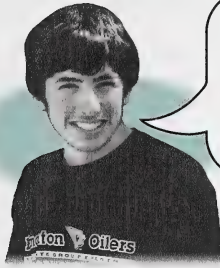
Here's an example of a clear offer and acceptance: "I'll sell you this computer right now for \$2000 cash" (offer). "I'll take it right now for that amount" (acceptance).

Now here's an example of an unclear offer: "I'm thinking of putting my house on the market for around \$180 000."

And here's an inadequate acceptance of the preceding offer: "Tell you what: I'll give you \$150 000 for it." This is not an agreement to the original offer; rather, it's a brand new offer.

consideration: something of value exchanged in a contract

- **Element 2:** There must be **consideration** on both sides—a legal term meaning something of value. Consideration can be money, goods, services, or something else. It can't, however, be something abstract like love or gratefulness. In the area of consumer law, of course, contracts normally consist of goods or services on one side that are exchanged for money on the other. These goods, services, and money are all types of consideration in contract law.



Let me get this straight. If I promise to give you my CD player and I change my mind, there's no contract. You couldn't make me keep my promise by taking me to court. Is that right?

That's right. But if we agreed that you'd sell it to me for \$50, there's consideration on both sides, so a contract would exist that the courts would enforce.



capacity: the legal ability to enter into a valid contract

- **Element 3:** The people making the agreement must have the legal **capacity** to form a contract. People who are legally insane, intoxicated, or underage lack the legal capacity to make binding contracts—with a few exceptions that you'll be looking at later on.
- **Element 4:** There must be genuine consent on both sides. For example, intimidation or misrepresentation (fraud) can't be present.
- **Element 5:** The purpose of the agreement must be lawful. For example, the courts won't enforce an agreement in which a drug pusher contracted to sell crack cocaine to an addict.

2. To get a better understanding of the five essential elements of a contract, turn to page 491 of your textbook and read section "16.1: Introduction" and "16.2: Agreement or Contract" up to, but not including, the heading "Types of Contracts" on page 492. Then tell which of the following situations are valid contracts that the courts will enforce.

- a. Ms. Carridine, owner of Carridine's Fruits and Veggies, tells Mr. Schuster that if he comes back at five o'clock on Saturday she'll give him all the strawberries she hasn't sold during the week.
- b. Ms. Novak, proprietor of Jewels for Fools, sells 16-year-old Veronica \$200-worth of jewellery.
- c. Stephanie agrees to sell Kwesi a graphing calculator she shoplifted from Borden's Electronics.



- d. Owen, buying an expensive jacket at Norma's Leather Emporium, tells the salesclerk that if she doesn't let him have the jacket at a greatly discounted price, she just might meet with a nasty accident on her way home from work.
- e. While shopping for a motorcycle, Caleb finds the machine of his dreams at an unbelievable price. In a thoughtless moment, he says to the salesman, "Actually, I was prepared to pay \$1000 more than you're asking for this model." "It's a deal!" responds the salesman.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

specialty contract:
an agreement signed
and put under seal

under seal: having
a seal attached to it,
thereby signifying a
formal contract

simple contract:
any contract—
implied, oral, or
written—that is not
under seal



express contract:
a contract in
which the terms
are specifically
laid out

implied contract:
a contract that
is suggested by
the actions of the
parties

Types of Contracts

When you hear the word *contract*, chances are you think of a formal, written agreement, signed by both parties, dated, and perhaps even witnessed. Some contracts are like this; in fact, certain sorts of contracts, called **specialty contracts**, must be written, signed, witnessed, and put **under seal**. Most contracts, however, are what are called **simple contracts**. They can be written, oral, or even implied by the behaviour of the parties.

Imagine that you go into a store and put the merchandise you want to buy on the sales counter. Without saying a word, the clerk rings up the price and you pay it. A contract has been created here by the behaviour of the two parties. You've made the offer by selecting and putting down the merchandise; the clerk has accepted it by taking your money and handing over the goods.

To learn more about types of contracts, read the material under the heading, "Types of Contracts" on pages 492 and 493 of your textbook. Note especially the difference between **express contracts** and **implied contracts**. When you've done the reading, answer the question that follows.

3. Create a chart like the one that follows and use check marks (✓) to indicate whether the contracts are implied or express.

Contract	Express	Implied
You buy a new sound system.		
You rent a car.		
You buy a chocolate bar.		
You get on a bus.		
You rent a computer game.		
You climb into your dentist's chair.		


Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

A Closer Look at Contracts



Now that you have a grounding in how contracts work, it's time to dig a little deeper. You'll do this by looking again at some of those basic elements of a contract; you'll begin with the element of valid offer and acceptance.

Offer and Acceptance



Turn to page 493 of the textbook and read section “16.3: Offer”—as far as the end of page 497, skipping the two case studies on pages 494 and 495. As you read, pay special attention to the discussion of advertising. When you've finished the reading, answer the questions that follow.

4. You pull up to a drive-through restaurant and order a burger, fries, and a pop. Moments later, the food is passed to you and you pay.
 - a. What constitutes the offer in this contract?
 - b. What constitutes the acceptance?
5. That same drive-through restaurant is having a promotional campaign. You read an ad in the paper, like the prices, and go and place an order. A moment later, you remember you need that money for lunch at school tomorrow, so you cancel the order. The restaurant owner comes to the window and says, “Sorry, we made an offer to sell in the paper. By coming here and placing an order, you accepted our offer. That's a contract, and you have to live up to it.”

Is the owner right? Explain why or why not.

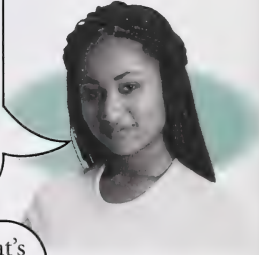
6. According to the common law, advertisements aren't usually considered legally binding promises. In some cases, however, they are. This is especially true when the wording is very precise and definite. In such cases, the courts consider such ads to be offers to sell.



The case in which the courts first took this position, and so offered consumers some real protection against fraudulent advertising, was tried in England in 1893. Turn to page 495 of your textbook, and read the famous decision in the case *Carlill v. Carbolic Smoke Ball Co.* Then answer the first three questions in your textbook that follow the case.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Let me get this straight. Normally a company can advertise its stuff and it's not legally binding as an offer—so the company is free to say how great a product is even if it's really useless. But if the company makes a very specific promise, the courts will interpret it as an offer and hold it to its promise if someone accepts the offer by buying the product?



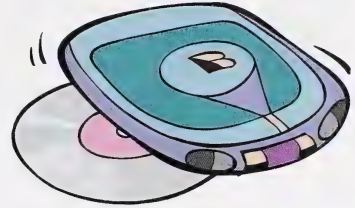
According to common-law principles, that's about it. But today there are statutes in place that offer consumers a good deal more protection from misleading advertising. You'll look at them in the next lesson.



The next thing you'll be examining is the need for a valid acceptance. Turn to pages 498 to 501 of your textbook and read all of section "16.4: Acceptance." Skip the case study on pages 498 and 499. When you've completed this reading, answer the following questions.

7. You're at a flea market and you see an old kerosene lamp that would be a nice addition to your antique lamp collection. You ask how much it is, and the seller tells you to make an offer. You offer to pay \$10 for it. The seller replies that it's yours for \$15. You say "Sold." Identify the offer and acceptance in this contract.
8. A magazine company sends you an offer through the mail for a one-year subscription at a reduced rate. The offer ends at midnight on July 15. On the morning of July 15, you drop your acceptance of the offer into the mail.
 - a. The company doesn't get your acceptance until July 18. It claims you waited too long and the offer has been withdrawn. Is the company within its rights?

- b. Your friend Paula receives the same offer in her mail. She waits until July 16 and faxes her acceptance back to the company. Will this be a valid acceptance that would bind the company? Why or why not?
9. You belong to a CD club. Every month you're sent a notice of that month's CD offering, and you're expected to notify the company if you don't want it.
- a. One month you forget to notify the company; and before you know it, a CD of music you detest arrives along with a bill. You refuse to pay, saying that you never accepted the offer so there was no contract. If things ended up in court, who would the judge agree with—you or the CD company? Why?
- b. When you joined the CD club, you agreed to buy at least four disks over a one-year period. You live up to your agreement, and properly notify the company that you're withdrawing from the club. Nevertheless, for the next six months you keep getting CDs in the mail. You don't like any of the music, so you just toss the disks into a drawer. The company brings a legal action against you for payment in full. According to common-law principles, are you liable to pay for the CDs?
10. You receive an unsolicited box of Christmas cards in the mail and, because you like the picture, you send them out to your friends without paying for them. Would the company that sent them have any legal grounds for a complaint? Explain your answer.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further

Your textbook reading touches on some of the many complex issues created in the area of contracts with the development of e-commerce in recent years. This fascinating—and important—area of contract law lies beyond the scope of this course, but if you'd like to dig a bit into current legislation in Alberta, here's a website address for you—the Queen's Printer:

http://www.qp.gov.ab.ca/catalogue/catalog_results.cfm

This site will give you access to current statutes and regulations in Alberta; you can just enter the titles you want to see in the Search window at the bottom of the page. Two titles you might use here are the *Internet Sales Contract Regulation* and the *Electronic Transactions Act*.

Alternatively, if you're after a bit of practical information that's easier to understand, try this website address:

<http://www3.gov.ab.ca/gs/information/publications/tipsheets/index.cfm>

When you're there, scroll down to "Shopping on the Internet" and see what you can learn.

e-commerce:
business conducted
over the Internet

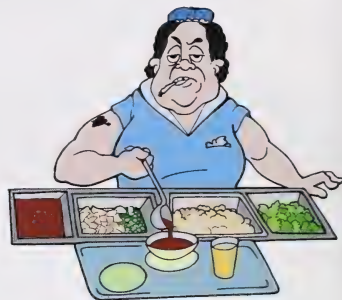


Consideration



As you know, courts normally recognize a contract as valid only when there's consideration on both sides (though, as you'll see, this isn't necessary for contracts under seal). To learn more about consideration and contracts, turn to page 502 of your textbook and read all of section "16.5: Consideration," again skipping the case studies. As you read, pay special attention to the differences between past, present, and future consideration. Then answer the following questions.

11. You buy lunch each workday for a month at a cafeteria. The cafeteria allows you to keep a tab so you don't have to pay each day. At the end of the month, you get a bill for \$105.75. You claim that since you've already eaten the meals, this is a case of past consideration and the courts won't uphold the contract. Are you right? Give reasons for your answer.



12. You go to your local hardware store to buy a staple gun; however, the store is all out of the guns you want. Feeling apologetic, Mr. Lee, the owner, says that if you wait a week for his next shipment, he'll sell you a gun for a dollar. You agree, but when you return a week later, Mr. Lee has changed his mind. When you remind him that there was a valid offer and acceptance, he replies that a dollar isn't adequate consideration for a good-quality staple gun. The courts, he says, would never enforce the contract. Is Mr. Lee right? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Legal Capacity

minor: a person under the age of majority

age of majority: the age at which a person can assume a legal obligation—in Alberta, 18 years

necessaries: goods and services considered essential for a person's health and well-being

If you're a high school student, chances are you're a **minor**—a person under the **age of majority**. Did you know that until you're 18 years old, you can't be held to most of the contracts you might make? That's because in most respects you lack the legal capacity to make binding contracts.



Most of the contracts? You mean in some situations I can be forced to live up to my contracts?

That's right. When you make contracts to buy what the law calls **necessaries**—things considered important for your health and welfare—the courts will hold you liable for them for your own protection.





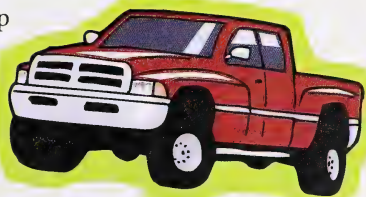
I don't get it. I make a contract to buy a snowboard—something I don't really need—and I can get out of it. But when it comes to important stuff, where you'd think the law would make things easier for me, suddenly I'm treated like an adult. And it's for my "protection"! How come?

- 13.** Can you answer that question? Suggest how this policy acts as a protection for minors.

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

To learn more about the protection the law of contracts offers people lacking legal capacity, turn to page 504 in your textbook and read section "16.6: Capacity"—to the middle of page 507. Skip over the case study on page 506. When you've finished the reading, answer the following questions.

- 14.** Landon is 17 years old. He goes into Bannerman's Bikes and buys a \$2000 mountain bike, putting \$300 down and arranging to pay the rest by instalments. After using the bicycle for a week, Landon decides he doesn't really like it. He takes it back to Bannerman's and asks for his money back. Ms. Bannerman refuses, claiming that a deal is a deal and that the machine is now dirty and has picked up a scratch or two. She insists that Landon pay the remaining \$1700 he owes or she'll see him in court.
- a.** Must Landon keep the bike and pay the money owing? Why or why not?
 - b.** Can Landon legally force Ms. Bannerman to return the \$300 down payment? Explain your answer.
 - c.** Can Ms. Bannerman insist that Landon pay for the damage done to the bike?
 - d.** Ms. Bannerman thought that Landon was 18 years old when she sold him the bicycle. If she learned the next day that Landon was a minor, could she have cancelled the contract and insisted that Landon return the bike?
- 15.** Mr. Smith has a great deal to drink and becomes very intoxicated. He staggers into a car dealership and agrees to buy an expensive truck at the sticker price, saying he'll pick it up tomorrow. The saleswoman quickly draws up the papers and finalizes the deal before Mr. Smith can sober up and understand what he's doing. Knowing that her customer shouldn't be driving, she orders him a taxi.



repudiate: to reject or disclaim a contract

Tomorrow, when he wakes up and realizes what he's done, can Mr. Smith **repudiate** his contract? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Genuine Consent



fraud: the telling of an intentional lie that causes a loss to another party

misrepresentation: a statement, either deliberate or accidental, that conveys false information

caveat emptor: a Latin expression meaning let the buyer beware

The need for the parties to a contract to both have given genuine consent to its terms is very important in consumer law. If you buy something having been assured by a salesperson that the product has certain features, for example, and it turns out that it doesn't have those features at all, common-law principles may allow you to repudiate the contract and get your money back.

To learn more about **fraud**, **misrepresentation**, and mistake in consumer transactions, turn to page 507 of your textbook and read section "16.7: Consent" as far as, but not including, the heading "Duress" on page 513, skipping the case studies on these pages and the sidebar information on the bottom of page 509. When you've completed this reading, answer the following questions.

16. Normally when a person agrees to buy something, the principle of *caveat emptor* applies. This is a very important principle that lies at the bottom of consumer law. Explain what this principle means.
17. Yasmine wants to paint the interior of her house. She goes to a hardware store and buys the paint she needs. The store owner assures her that this paint can't be damaged by freezing, so Yasmine stores it in her unheated garage in January. Eventually, Yasmine does paint several rooms in her house, only to find all the paint peeling off the walls within days. By contacting the manufacturers, Yasmine discovers that the -30°C temperatures the paint was exposed to are no doubt responsible for the damage.
 - a. Yasmine goes to the store and demands her money back. She also wants financial compensation for all the work, inconvenience, and expense of cleaning up the mess in her home. Will she likely be successful? Explain your answer.
 - b. Yasmine decides that she's had enough of painting; she hires professionals to do the work for her. She agrees to pay \$1100 for the job, but when she receives her bill, it reads \$110. Yasmine gleefully sends a cheque for that amount, congratulating herself on her good luck. Since she has the bill in writing, she figures, there's no way the painters can make her pay the agreed-upon amount. Is Yasmine right? Why or why not?



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Discharging Contracts

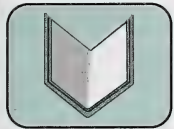
To finish your look at protection offered consumers by the law of contracts, you'll briefly examine ways in which contracts can be **discharged**.

discharge: to complete the obligations in a contract

A contract is discharged when it's brought to an end. This can be done in one of three ways:

- Both parties carry out their shares of the bargain.
- The two parties agree to call the whole thing off.
- There's a **breach of contract** on the part of one of the two parties, in which case the obligations of the other party come to an end.

breach of contract: failure to perform a duty imposed by a contract



breach of condition: failure to perform a fundamental part of a contract

breach of warranty: failure to perform a minor part of a contract

Sections "17.2: Discharging the Contract," and "17.3: Breach of Contract," deal with bringing contracts to an end. Turn to page 522 of your textbook and read this material to the bottom of page 525—once again skipping the case studies. Note especially the distinction between **breach of condition** and **breach of warranty**. When you've done the reading, answer the following questions. Then your examination of contract law will be finished.

- 18.** Dave contracts with Ralph's Roofers to put a new roof on his house for \$6000 before the end of June; but when Ralph and his crew show up on June 29 to do the job, they find Dave's property cordoned off by the police as a crime scene. They can't get access to the house until July 1. Unfortunately, the night of June 30, there's a heavy rain, Dave's roof leaks, and damage is done inside the house. Dave sues Ralph's Roofers for failing to perform their side of the contract.

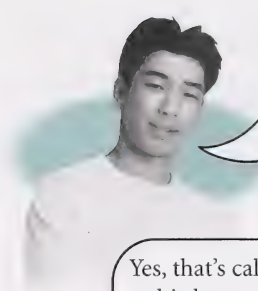


Will the courts likely decide in favour of Dave or Ralph's Roofers. Give reasons for your answer.

- 19.** Mr. Diaz orders a new car from a local dealership. Because he often uses his car to carry a good deal of cargo, Mr. Diaz is careful to order the station-wagon model. However, when the vehicle arrives, it's a two-door sedan. When he refuses to accept it, the salesman tells him that legally he has to; the vehicle is precisely what he asked for in every other respect, right down to the CD player and bug deflector.

Who's right, Mr. Diaz or the salesman? In your answer, refer to the terms *breach of warranty* and *breach of condition*.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



Before finishing up this stuff on contracts, I have one last question. If I make a contract, can I transfer my rights or obligations to someone else? For example, let's say I owe \$50 to my friend Dean. If I sell my skates to Enrico for \$50, and he owes me the money, can I legally transfer my right to be paid that money to Dean? That way, Enrico would have to pay Dean, not me.

assign: to transfer to a third party a right or obligation under a contract

Yes, that's called **assigning** your rights or obligations to a third party. The basic rule is that you can assign your rights freely, as in your example, but you can't assign your obligations without the consent of the person you've contracted with. In your example, Enrico couldn't assign to another person his obligation to pay you the \$50 without your say-so.



Going Further



You've probably noticed that one element of a contract hasn't been covered in this discussion—legal purpose. Only contracts that have a legal purpose are enforceable. This element doesn't bear as directly as the others on the topic of this section—consumer law. However, if you'd like to learn more about it, read section "16.8: Lawful Purpose" on pages 513 to 518 of your textbook.

tort: a civil wrong other than a breach of contract

Tort Law

Traditionally, contract law was the only common-law remedy people had for consumer-related legal problems. A principal shortcoming with this situation was that consumers had no recourse if they suffered a loss caused by a party they hadn't actually contracted with.

For example, if a manufacturer made a product and sold it to a merchant, and you bought it from the merchant, your contract would be only with the merchant, not the manufacturer. If the product proved defective or, worse yet, if you were injured by it because of some flaw, the only person you could take legal action against was the merchant. But the merchant could deny any responsibility for the faulty manufacture of the product, leaving you, the consumer, with absolutely no legal means of getting compensation. The situation was even worse if a friend or family member was injured because that person would be even farther removed from the contractual relationship.

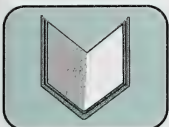


duty of care: a responsibility not to cause harm to others

negligence: the failure of a person to use reasonable care that results in an injury or loss to another

All this changed in 1932 with the decision of England's highest court in the famous case of *Donoghue v. Stevenson*. This case established that a manufacturer owes a **duty of care** to anyone who buys its products or who could reasonably be expected to use those products, whether or not a contract existed between them. This principle, central to what's called the law of **negligence** (an area of tort law), means that a consumer who's harmed by a flaw in a product can take the manufacturer to court for compensation.

20. To learn about this vital common-law protection to consumers, turn to page 338 of your textbook and read section "12.2: Negligence and Intent," as far as, but not including the subheading "Minors and a Duty of Care" on page 340. Then read "Looking Back: The Snail in the Bottle" on pages 343 and 344. When you're finished, answer the four textbook questions that follow the reading.



Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

An examination of the protection that negligence law offers consumers is beyond the scope of this lesson; however, you should be aware of this recourse for consumers who are harmed by the products they buy or use. If you'd like to learn more about negligence law, consider taking Legal Studies 3040: Negligence.

You've done a lot of reading in this lesson, and you should now have a good grounding in protection for consumers offered by the common law. However, most consumer protection in Canada today comes from statutes passed by both the federal and provincial governments. These are what you'll be examining in Lesson 2.

Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment,
and answer questions 1 to 4.

Suggested Answers

1. Consumerism as we know it today is a fairly recent phenomenon. In the past, people tended to provide for many of their own needs themselves; and when they did buy products, they often bought directly from local people who had manufactured them. The complexities of our consumer society today, however, have required more laws to protect consumers from negligent or unscrupulous merchants, manufacturers, and salespeople.
2.
 - a. Since Ms. Carridine isn't receiving any consideration for the strawberries, this is a promise, not a contract. The courts won't enforce a promise.
 - b. The situation isn't quite as simple here, as you'll be learning. If Ms. Novak tries to get out of the contract, Veronica can have the courts enforce it. However, if Veronica, a minor, tries to get out of her bargain, Ms. Novak can't have it enforced.
 - c. Since this contract has an illegal purpose, the courts won't enforce it.

- d. There is no genuine consent here since intimidation has been used. Therefore, the courts won't enforce the agreement.
- e. There is no valid contract here. Caleb's statement clearly isn't meant as an offer.

3.

Contract	Express	Implied
You buy a new sound system.	✓	
You rent a car.	✓	
You buy a chocolate bar.		✓
You get on a bus.		✓
You rent a computer game.	✓	
You climb into your dentist's chair.		✓

- 4. a. The offer is made as you place your order.
b. The acceptance happens when your money is accepted and the food is handed to you.
- 5. No, the owner isn't right. The advertisement is only an invitation to do business. You made the offer when you placed your order; and until it's been accepted, you can revoke it.
- 6. **Textbook question 1:** In the case of some advertisements, an offer can be made to an indefinite number of people. Such ads must be very specific and precise in their promises; otherwise, they're considered merely invitations to do business.

Textbook question 2: The company argues that their advertisement was, like other advertisements, simply an invitation to do business. When Mrs. Carlill bought the medicine, the company argues, she made an offer to buy that was accepted, but no mention was made of any reward.

Textbook question 3: According to the court, this wasn't necessary. Simply buying the product and using it as directed was, in the court's opinion, acceptance of the offer made in the ad.

- 7. The offer is the seller's statement to the effect that you can have the lamp for \$15. The acceptance is your reply, "Sold."

Note that you began with an offer when you said you'd pay \$10 for the lamp, but this was rejected by the seller.

- 8. a. No, the company isn't within its rights. In this case, offer and acceptance both use the mail, and the rule in such situations is that the deal becomes binding when a properly stamped and addressed acceptance is mailed.
b. In this case, the offeree (Paula) uses a different, but reasonable, method of accepting the offer, assuming that the offer contained no instructions that ruled out faxing as a means of acceptance. In such cases, the rule is that the contract is made when the acceptance is received. Since Paula's acceptance was neither sent nor received until July 16, the company wouldn't be bound by it.

- 9. a.** The judge would likely agree with the CD company. Normally the common-law rule is that failure to say no to an offer cannot be considered an acceptance; however, in the case of book and record clubs, this rule doesn't hold. When they join up, members of clubs of this sort agree that remaining silent when an offer to purchase is made will be considered a legally binding acceptance.
- b.** No, you aren't liable to pay for the CDs, according to common-law principles, as long as you haven't used them.
- 10.** The package of cards may have been a gift from a charitable organization that hoped you'd feel a moral obligation to pay for them. As gifts, the cards are yours to do with as you wish. If, however, the cards were sent out unsolicited as an offer to purchase, you're free to keep them or return them—or throw them away. In this case, however, the common-law principle is that if you choose to use the cards—as you've done in the question—you've accepted the offer and are legally obligated to pay for them. The company would have legal grounds to complain.
- 11.** No, this is a case of future consideration, which the courts regard as legally valid. If a contract is made in which one or both parties agree to perform their part at some future date, a valid contract has been created. Past consideration occurs in a situation where one party agrees to give the other something in return for something the other party has already done. The courts treat this as merely a promise, and promises aren't legally enforceable.
- 12.** No, Mr. Lee isn't right. The courts don't care whether consideration is adequate or even appropriate; they only look to see that there is some consideration on each side. This is why you'll sometimes hear about one party selling something worth a great deal of money to another party for only a dollar. In such a case, the one party is really making a gift of the valuable asset; but to make it a legal contract, the dollar is charged so that there is consideration of both sides.
- 13.** The danger is that if merchants know that minors can repudiate any contracts they enter into, those merchants may be unwilling to sell minors anything—especially on credit. This isn't an overwhelming problem when it comes to life's extras; but in the case of necessities, it could leave young people unable to buy food, clothing, and shelter. Knowing that contracts for such necessities will be enforced by the law gives merchants the confidence they need to do business with minors.
- 14. a.** No. Since a bike isn't considered a necessary, Landon, a minor, can repudiate his contract to buy it.
- b.** No, Ms. Bannerman can legally keep the down payment since Landon did get some benefit from the bike.
- c.** No, Ms. Bannerman can't charge Landon for the wear and tear on the bike since it wasn't deliberately caused.
- d.** No, Ms. Bannerman isn't free to repudiate his contract simply because she was under a mistaken impression. Even if Landon had lied and told her he was 18 years old, the contract would stand, though Ms. Bannerman could take Landon to court on a charge of fraud.
- 15.** If Mr. Smith takes steps to repudiate his contract immediately, he'll likely be able to do so if he can prove that he was unable to understand what he was doing when he made the contract and that the saleswoman knew this. Ironically, the saleswoman's responsible act in ordering Mr. Smith a taxi would be considered good evidence that she knew her customer was inebriated.

16. The principle of *caveat emptor* is simply that when contracting to buy something, a person is responsible for investigating the article and arriving at a sensible arrangement. The law won't step in and help people who find they've made a bad deal. Adults in charge of their faculties are expected to be able to manage their own affairs. If they're simply outsmarted by the other party to a contract, and nothing illegal has gone on, the contract will be upheld.
17. a. In telling Yasmine that the paint wouldn't be harmed by freezing, the merchant was guilty of misrepresenting a material fact. If this was an innocent misrepresentation—in other words, if the merchant was simply mistaken—Yasmine would probably get her money back for the paint but no more. If there was fraud involved—that is, if the merchant lied—Yasmine would probably get compensation for all her lost time and money. Things aren't always entirely cut and dried, however, and the courts might take the position that even if no fraud was involved, the merchant ought to have known that the paint would be damaged by the cold. In this case, Yasmine might also be awarded damages for her losses.
- b. No, Yasmine isn't right. This is a case of simple clerical error, and the painters can't be made to accept \$110 for a job they'd agreed to do for \$1100.
18. Traditionally, the courts would likely have decided in favour of Dave because, in fact, Ralph's Roofers did fail to do what they'd contracted to do. Today, however, a judge might well decide that the contract had been frustrated, pointing out that it wasn't possible for the roofers to do their job when they showed up intending to do it. Dave's lawyers might make the case, however, that Ralph and his team shouldn't have waited until almost the last minute to discharge their contractual obligations.
19. Mr. Diaz is right. In this situation, a breach of condition has occurred; in other words, the breach is an important one affecting a fundamental part of the deal. In this case, Mr. Diaz has the right to rescind the contract or insist that the dealership deliver the vehicle he ordered. Had the breach been a minor one, such as the absence of a CD player, a breach of warranty would have occurred. In such a case, Mr. Diaz would have to accept the car but either pay less for it or insist that the CD player be installed.
20. **Textbook question 1:** Donaghue would have claimed that the manufacturer hadn't taken proper care in cleaning and inspecting its bottles and ginger beer. Clearly the manufacturer, not the merchant, was at fault since the bottle was sealed at the factory.

Textbook question 2: Manufacturers have to establish that they've exercised an adequate standard of care to make their products safe for the public. This would involve such things as quality-control procedures and thorough inspections.

Textbook question 3: This is the case that established for the first time that manufacturers owe a duty of care to those who consume their products. This case really began the whole area known today as negligence law.

Textbook question 4: The quotation means that everyone owes a duty of care to those with whom they come into contact. We must all avoid doing things or forgetting to do things that a reasonable person would realize might harm or injure another person.

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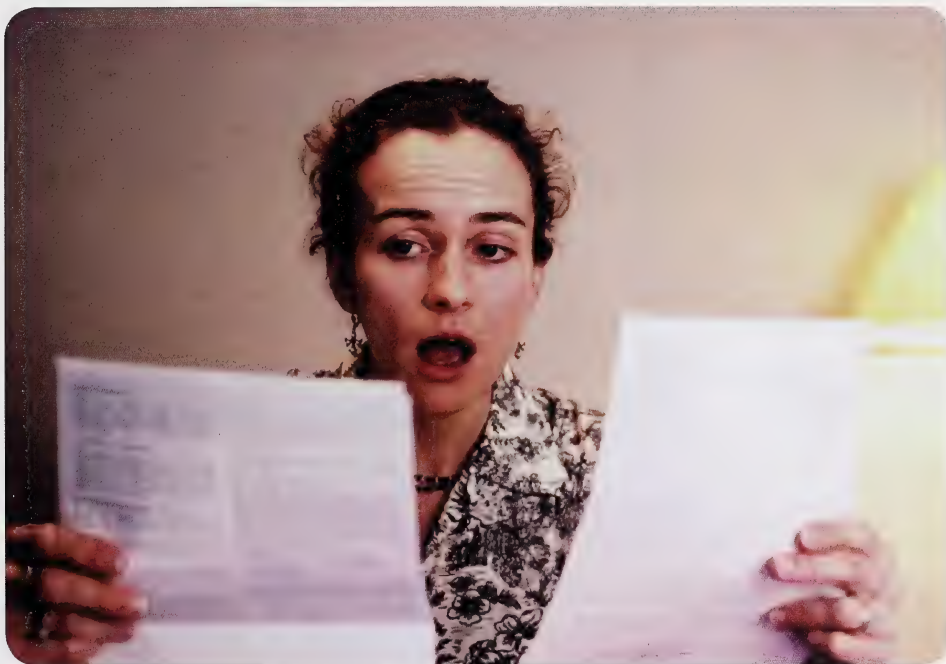
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Lesson 2: Statute Protection



If you were victimized by the questionable sales practices of an unscrupulous merchant, would you use the old common-law principles you studied in the preceding lesson to set the situation straight?

You might, but these days it's more likely that you'd base your case on a piece of legislation—probably provincial legislation. As you noted in Lesson 1, today's consumer culture has resulted in a good many statutes in recent years designed to deal with the many legal problems consumers can find themselves facing. In this lesson you'll look at how a few of these laws work.



The Sale of Goods Act

The original consumer-law statute, passed in England in 1893, was the *Sale of Goods Act*. Statutes similar to this one have since been enacted in each common-law province in Canada—along with the territories. (Quebec, with its French heritage, doesn't use the common law. Rather, its legal system is based on a statute known as the *Code Civil*, which harks back to the days of Napoleon.)

Alberta, therefore, has its own *Sale of Goods Act*, which is similar in most respects to those of the other eight common-law provinces and territories. This statute clearly sets out the basic rules governing the exchange of goods for money in this province.

To learn about Alberta's *Sale of Goods Act*, turn to page 532 of your textbook and read all of section "17.4: Sale of Goods Legislation," on pages 532 to 538. Skip over the case studies on these pages. As you read, pay special attention to the discussion of **express** and **implied conditions** and **warranties**. When you've finished the reading, answer the following questions.

express condition:
an important term in a contract that both parties agree upon

implied condition:
a term in a contract that hasn't been precisely laid out but is assumed by both parties

express warranty:
an explicit, clearly stated guarantee that's usually written down

implied warranty:
a guarantee that a seller may not actually make but which the law says is part of the contract anyway

1. Which of the following transactions would be covered by the *Sale of Goods Act*? Use check marks (✓) to indicate your answers.

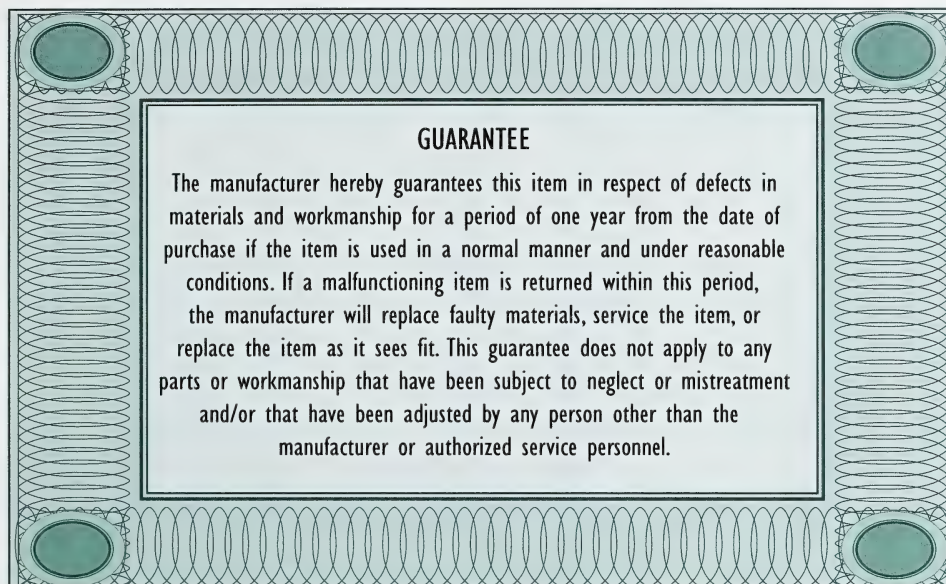
Transactions	Sale of Goods Act
Johann's Auto Repair agrees to regrind the valves in the engine of Tristan's car for \$400.	
Yolanda sells all her shares in the LMN Company to Darlene for \$43.75 a share.	
Armand agrees to sell his house to Mary-Lynn for \$150 000.	
Bach-Chu buys a clarinet at Casper's Second-Hand Store.	
Brenda agrees to pay Louis \$200 for the use of Louis's car for a week.	
Wes agrees to baby-sit Claudia's son if Claudia works out his income tax for him.	

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

In the preceding lesson, you looked at breach of warranty and breach of condition. A condition in a sales contract is a term of fundamental importance while a warranty is a promise made by a seller or manufacturer to the buyer that the product meets certain standards. Both conditions and warranties, as you've read, can be express or implied—that is, they can be spelled out in the deal or they can be understood by the parties without ever actually having been stated.

This may sound confusing, but it really isn't. An example of an express condition is that a pair of shoes you order be size 11. If you receive the shoes and they're size 7, they're useless to you and you can refuse to accept them, thereby voiding the contract. An example of an express warranty is the printed guarantee you might get with a product you purchase that it won't malfunction due to materials or workmanship for a year after the purchase date. If it does break down before a year is over and it hasn't been abused, you can get compensation from the seller or manufacturer (whichever made the guarantee in the first place).

guarantee: an
express warranty



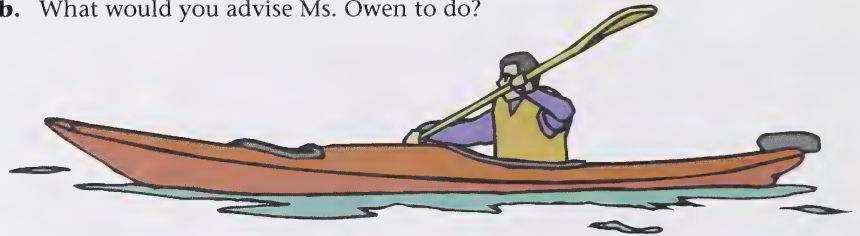
2. You go to the kitchen-utensils department of a store and see a sign saying that all coated pots and pans are guaranteed not to allow food to stick to them for three years if used according to the manufacturer's instructions. You buy a frying pan and treat it properly, but within three months the coating begins to wear off and food starts to stick. On digging out the sales slip and the literature that came with the pan, you can't find any reference to the guarantee. According to your textbook, are you protected?

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

What's important from the point of view of the *Sale of Goods Act* is the existence of implied conditions and warranties. According to this legislation, as you've read, whenever goods are sold, these implied conditions and warranties come into play even if neither merchant nor purchaser mentions them.

3. List the **three** implied conditions and warranties that are present in any sale of goods.
4. Konstantin buys a digital camera from Joel for \$250, but it turns out that Joel had stolen the camera from Paige. Who has title of the camera—Konstantin or Paige?

5. Ms. Nijjer buys a food processor from a local hardware store. When she goes to use it, it simply falls apart—the plastic housing breaks, the controls refuse to work, and within three minutes the motor burns out. The hardware-store owner's reaction is simply to say "*caveat emptor*" and to wish Ms. Nijjer better luck next time. Could Ms. Nijjer commence a legal action under the *Sale of Goods Act*? Explain your answer.
6. Mr. and Mrs. Toronchuk decide to put hardwood flooring throughout their home. At the store, a salesman shows them a sample of long-strip, white-oak flooring that happens to be on sale. The Toronchuks order enough of this flooring to do their entire home; but when it's delivered two weeks later, the strips are all short and are clearly a mixture of red and white oak. Under the *Sale of Goods Act*, must the Toronchuks accept delivery of the flooring? Why or why not?
7. Ms. Owen sells Kim a fibreglass sea kayak for \$2000. She allows Kim, who's travelling to the coast the same week, to take the kayak right away with a \$200 down payment. When Kim later fails to pay the balance owing, Ms. Owen claims to have a lien on the boat under the *Sale of Goods Act*, and she sends two burly employees over to Kim's house to take it back.
 - a. Is Ms. Owen acting within her rights? Why or why not?
 - b. What would you advise Ms. Owen to do?



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



The textbook discusses those *disclaimer* clauses we looked at back in Section 1. Is my interpretation right—that merchants can get out of the implied conditions and warranties of the *Sales of Goods Act* if they have disclaimers and draw customers' attention to them?

Basically, yes—though provinces do regulate disclaimer clauses. Often a court has to decide whether a disclaimer is valid or not, but the rule of thumb is that if merchants try to slip one by customers, it won't work. On the other hand, disclaimers may be effective if they're in plain view—for example, on the front of the contract of sale. So you should always read everything very carefully if you're making a purchase—especially, of course, if it's a major purchase.



The *Sale of Goods Act* is an important piece of consumer legislation, but it's limited to absolute sales of personal goods. Also, it doesn't affect manufacturers, and it offers no protection to people who aren't actually buyers. Because of limitations like these, over the past few decades governments have been busy passing other statutes designed to protect consumers from unfair or dishonest business practices. The remainder of this lesson will look at a few of these statutes. Before moving on, however, here's a list of consumer tips related to guarantees you should always keep in mind whenever you make a purchase.

Consumer Tips

- Before you buy, read any explicit warranties to be certain that they clearly state what they guarantee (and what they don't guarantee). Find out who pays for parts and labour.
- If possible, compare the guarantees offered by different manufacturers and merchants. Remember that the lowest price may not be the best deal if the seller can't afford to offer a good warranty.
- If the merchant makes any promises orally, get them in writing. Oral promises are normally binding, but it can be hard to prove that they were ever made.
- Beware of meaningless statements like "Fully Guaranteed" or "Lifetime Guarantee." Ask questions like "Fully guaranteed against what?" or "Whose lifetime?"
- Find out if the seller is equipped to provide service and if there's a factory-authorized outlet nearby.
- Make sure you understand how long any explicit warranties last.
- Inquire whether there's a cash or credit reimbursement in the event of a product failure.
- Ask whether a substitute product will be provided if yours ends up in the repair shop.
- Beware of impressive-looking, wordy warranty documents: they may be designed to cover up what they don't include.
- Always check for disclaimer clauses.



Other Consumer-Protection Legislation



Imagine the following scenarios:

- A mechanic tells a car owner that his car needs a new head gasket—a job that will cost about \$500. Knowing nothing about cars but being afraid to ignore his mechanic's advice, the owner agrees to the work. In actual fact, there's nothing wrong with his car's head gasket.
- A door-to-door vacuum-cleaner salesman uses pressure tactics to bully his way into the home of an elderly couple and intimidates them to the point of buying an expensive vacuum cleaner. Fearing the man won't leave their home without a sale, the couple feel they have no choice but to buy a machine they neither need nor can afford.
- A young couple, buying their first fridge and stove, are told by the saleswoman that if they buy on credit they'll pay only 3 percent interest. The papers are drawn up and the couple sign, only to discover later that rather than 3 percent per year, the interest rate is 3 percent per month—or 36 percent annually.

None of these situations are covered in the *Sale of Goods Act*, but all involve the victimization of consumers by people using unscrupulous business tactics. To offer consumers help in situations like these, both the federal and the various provincial and territorial governments have taken action and passed consumer-protection laws. In this part of Lesson 2, you'll look briefly at a few of the more important of these laws.

Though there are consumer-protection laws in place at both the federal and provincial/territorial levels, there's a difference in the sorts of legislation the two levels of government have passed.

For the most part, the federal statutes approach dishonest business practices as criminal offences. That means that the public authorities will prosecute those suspected of breaking these laws and punish them, if found guilty, with things like fines and even prison sentences. This sort of thing should certainly discourage people from engaging in unfair practices, but it doesn't do much for individual consumers who have been victimized by such practices. What they're after is usually financial compensation.

That's where provincial laws come into play. For the most part, they're designed to allow consumers to go after compensation in civil actions. For this reason, if you find yourself in a situation where you think you've been the victim of an unfair business practice, it will probably be an Alberta statute that will allow you to try to get compensation.

For an introduction to consumer-protection legislation, turn to page 538 in your textbook and read section "17.5: Consumer Protection" as far as, but not including, the subheading "Conspiracy" on page 539. Be sure to study the chart on page 539.

Federal Statutes

Your textbook lists five important federal statutes that offer protection for consumers:

- the *Competition Act* (formerly called the *Combines Investigation Act*)
- the *Consumer Packaging and Labelling Act*
- the *Hazardous Products Act*
- the *Textile Labelling Act*
- the *Food and Drugs Act*



Your textbook includes a short chart outlining the basics of four of these statutes. The chart that follows explains in rather more detail some of the principal things the five statutes do to protect consumers.

bait-and-switch selling:
the practice of attracting buyers by offering goods at a low price and then saying they aren't available and trying to sell more expensive goods instead

Some Federal Consumer-Protection Statutes	
The Competition Act	<ul style="list-style-type: none"> • is the principal law regulating advertising • makes misleading advertising illegal, including statements made by salesclerks, signs, and commercials on radio and television and in newspapers and magazines • requires merchants to sell any article with two price stickers at the lower price • makes bait-and-switch selling illegal • requires that advertised tests and testimonials to the effect that a product is superior to others be backed by proof of results • encourages competition between businesses
The Consumer Packaging and Labelling Act	<ul style="list-style-type: none"> • sets rules for packaging and labelling goods for sale • sets standards for package sizing to help buyers compare products • sets standards for listing ingredients and quantities of products • requires that names and addresses of manufacturers be shown
The Hazardous Products Act	<ul style="list-style-type: none"> • specifies dangerous consumer products that cannot be sold or advertised in Canada • requires warnings in both official languages (and with symbols) on labels of dangerous household products • requires test results to set safety standards for certain products (e.g., children's car seats, seat belts, hockey helmets) • provides for the appointment of inspectors with the power to search for and seize hazardous products
The Textile Labelling Act	<ul style="list-style-type: none"> • requires labelling on fabrics, clothes, and household textiles
The Food and Drugs Act	<ul style="list-style-type: none"> • protects consumers from health injuries and fraud related to food and drugs • prevents companies from advertising products as cures for specified diseases • prevents the sale of food that is poisonous, unfit for consumption, or otherwise impure • defines restricted drugs and sets penalties for their possession and trafficking • requires new drugs to be investigated and monitored



Of course, these statutes do a great deal more than this chart shows, but it should give you an idea of the sorts of ways in which the federal government is at work to protect consumers. To get a little more background on the *Competition Act* and the three general types of offence it deals with—conspiracy, misleading advertising, and deceptive marketing—turn to page 539 in your textbook and read from the subheading “Conspiracy” as far as, but not including, the Agents of Change sidebar on the bottom of page 540. When you’ve finished, answer the following questions:

8. Design a simple chart that explains in plain language the three categories of offence covered in the *Competition Act*.

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

There are many other federal statutes offering consumer protection. Two of the best known are

- the *Weights and Measures Act*
- the *Motor Vehicle Safety Act*

Both of these acts (and many others) set standards for safety, provide penalties, and otherwise regulate the manufacture and use of consumer products. The main body of the federal government responsible for overseeing consumer rights is the Competition Bureau, a department of Industry Canada. This department is charged with the responsibility of promoting fair competition in Canada. The people in this department look into complaints in such areas as hazardous products, packaging and labelling, and misleading advertising.

Going Further

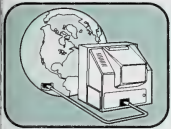
Here's the website address of the Competition Bureau. It contains easily accessible information about consumer protection. If you'd like to learn more, take a look and see what you can discover. The News Room will give you access to news releases and fact sheets.

<http://www.competitionbureau.gc.ca/>

9. You see an ad in the newspaper for a good brand of in-line skates at a very reduced price. You go to the store but are informed that the skates you saw advertised aren't available. However, the clerk tries hard to interest you in a more expensive pair, telling you that they're actually a better-quality product.



- What illegal sales technique seems to have been used here?
- What federal statute makes this sort of activity illegal?
- What general heading can be used to cover this sort of marketing offence?
- Sometimes merchants charged with breaking the law in situations like these can mount successful defences if they can prove to the court that they had a legitimate reason for this sort of activity. Suggest a defence that a merchant might use in a case like this.



- e. If merchants honestly advertise a product at a low price but are unable to provide it to their customers, what steps might they take to remedy the situation?
10. In the chart that follows, state the name of the federal statute under which the wrongdoer can be prosecuted in each situation. Note that in some cases the statute may not be one you've looked at specifically; you should, however, be able to decide which one would apply.

Situation	Statute
A cookie manufacturer decides not to list peanut oil in the ingredients of a new line of cookies for fear of scaring off people with peanut allergies.	
A seller of bulk foods uses a substandard, cheaply made scale to weigh products for sale.	
An importing company imports a sauce manufactured in filthy conditions and containing some questionable ingredients.	
The manufacturer of a household cleaner fails to put a poison symbol on a can of highly corrosive drain de-clogger.	
An automobile manufacturer knows one of its models is unsafe if struck from the rear but decides it's too expensive to recall the vehicles for repair.	

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

Going Further



As you saw when reading about telemarketing schemes, recent technological advances have opened up whole new areas of consumer fraud. Indeed, this area is by far the most talked about—and, in the opinion of many people, the most fascinating—area of consumer law today.



Unfortunately, going into any depth on this topic lies beyond the scope of this course, but one area in particular you might like to investigate is that of protecting your personal information and identity theft. You can begin by reading the short discussion on the top of page 542 of your textbook. If that arouses your curiosity, go online and see what else you can discover. Using the search terms *identity theft* and *Canada* with any search engine should provide you with a wealth of material; or, if you'd rather, you can get started with this website address:

http://www.safecanada.ca/identitytheft_e.asp

Provincial Statutes



If you feel you've been the victim of unfair business practices, what you really want most is probably to get your money back. While federal laws can punish unscrupulous business people, it's provincial legislation that allows consumers to take legal action against such people for compensation.

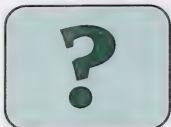
Most provinces and territories have passed similar sorts of consumer laws. Sometimes these laws have the same names from province to province; sometimes they don't. Recently, the province of Alberta has combined several consumer-protection statutes into one act—the *Fair Trading Act*. Another important Alberta statute offering protection to consumers is the *Unconscionable Transactions Act*.

To get a general idea of the sorts of things these statutes—and their equivalents in other provinces and territories—do, turn back to page 542 of your textbook and read from the heading “Provincial Laws” to the end of page 544. When you've completed this reading, answer the following questions.

- 11.** The various provincial governments in Canada have established a cooling-off period when it comes to door-to-door sales. In Alberta, the *Fair Trading Act* allows you, as a buyer, to cancel a purchase of over \$25.00 within 10 days without having to provide a reason—as long as you can prove the date you cancelled it. A purchase can be cancelled in writing in any way—for instance by delivering it in person, by using registered mail or by courier, or by faxing it. Explain what this means.

Explain why the provinces in Canada have each passed laws stipulating a cooling-off period.





12. Alberta's very short *Unconscionable Transactions Act* is a straightforward statute that gives the courts the power to decide if a rate of interest charged a consumer is too high when compared to rates being charged by other lenders and sellers. If the decision is that the rate is, in fact, too high, the court can change it and even make the lender pay back the difference to the borrower.

Some people object to legislation of this sort, saying that it flies in the face of the principle of *caveat emptor*.

- a. Explain just what this objection means.
- b. In a paragraph or two, take one side of the issue and defend it. Be sure to give clearly presented reasons for your position. If you're working with a friend, take sides and debate the issue.

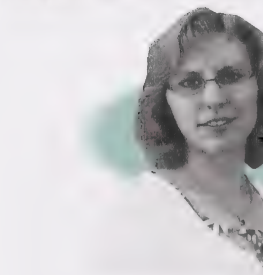
Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

credit bureau:
a profit-making
business that keeps
records on the credit
histories of people

credit rating: an
assessment of a
person's reliability
when using credit
based on his or her
history of borrowing



I'm not sure I understand this business in the textbook about credit. For instance, my older brother tried to buy a truck, but his application for a loan was turned down because he was considered a bad credit risk. How do you get a reputation like that and what can you do about it?




The institution your brother applied to for a loan probably consulted a **credit bureau**. A credit bureau is an organization that keeps records on how well people pay off their debts. A lender can consult their records to find out a person's **credit rating** and then make a decision whether or not to lend on that basis.



That's right. You have the right to check the credit bureau's files on yourself to review your own credit rating. If you have trouble getting a loan and you don't know why, it might be wise to check your file just to make sure the information is accurate.




So I guess it's smart to keep a good credit rating by paying off your debts.

- 
13. Raquelle had never borrowed money, but she could see the day coming when she'd have to. While she still had money in the bank, she took out a small loan; then she quickly repaid it, along, with interest, of course. Suggest a reason why Raquelle might have done this.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Going Further



In the last textbook reading, two Canadian credit bureaus were mentioned: Equifax Canada and TransUnion Canada. The websites of these two for-profit organizations are, respectively,

<http://www.transunion.ca/TUCorp/home.asp>

http://www.equifax.com/EFX_Canada/welcome/overview_e.html

Choose one or both of these credit bureaus, browse through their websites, and see what you can learn. Note, in particular, how you can go about checking your own credit rating.

As already noted, in Alberta the principal consumer-protection statute is the *Fair Trading Act*, but since your textbook is written about Canada as a whole, naturally it doesn't discuss provincial statutes in any detail.

The *Fair Trading Act* is broader in scope than the *Sale of Goods Act*; it covers transactions involving the sale of personal goods (but not real property) as well as services (for example, car or household repair jobs). It also covers transactions that aren't absolute sales—for instance, leases and contracts in which the consideration isn't necessarily money. Even lottery winnings are covered in the *Fair Trading Act*. One of the few situations not covered in the *Act* is contracts for domestic labour. (An example of domestic labour is cleaning service.)

Alberta's *Fair Trading Act* covers a good deal of territory, combining consumer protection once offered by several different statutes. For example, this statute spells out that any consumer credit agreement (any agreement according to which a buyer will be given credit to buy something—credit that must be paid back with interest) must stipulate in writing such things as the description of the goods, the sale price, the total amount of credit, the interest rate *per annum* (per year), and the total amount—including interest that is to be paid. At one time, this consumer protection was offered by another statute (the *Credit and Loan Agreements Act*).



Among other things, the *Fair Trading Act* prohibits the following sorts of tactics as unfair trade practices:

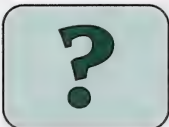
- putting unreasonable pressure on a customer
- taking advantage of a customer who can't understand what's going on—for instance, someone who doesn't understand the language well
- knowing that something is wrong with a product or a service (while the customer doesn't know this) and selling it anyway
- making misleading statements to persuade a customer to buy a product or service

14. Which of the following would likely **not** be prohibited by Alberta's *Fair Trading Act*?

- a. A mortician, realizing that a widow is in a state of great emotional stress due to the death of her husband, pressures her to buy an ornate casket worth thousands of dollars even though he knows the man wished to be cremated.
- b. A clothing retailer discovers that the jeans in a shipment of clothing she imported fall completely apart on the first washing. Nevertheless, she advertises them as "durable" and continues to sell them, hoping that most customers won't bother to demand a refund.
- c. An automobile dealer, knowing that a customer (a recent arrival in Canada) wants to buy a car, takes advantage of the man's poor English skills to get him to sign a leasing agreement instead.
- d. Signs in a store tell customers that all prices have been reduced by 20 percent for that day only. In actual fact, everything is selling at its normal price.

15. You've heard a good deal in this section about businesspeople making misleading statements, and you've briefly looked at some of the sorts of misleading advertising that the law prohibits. Alberta's *Fair Trading Act* spells out very specifically the sorts of illegal misleading statements that unscrupulous businesspeople of all types may make.

If you have a study partner, take a few minutes and brainstorm as many sorts of misleading statements as you can. Try to think of different sorts of situations, for example, people selling used goods, people selling over the phone, or people in the business of home repairs.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further

Here's a website address that will give you a great deal more information—by way of easily understood tip sheets—about *Alberta's Fair Trading Act*:

<http://www3.gov.ab.ca/gs/information/publications/tipsheets/index.cfm>

Once there, click on any of the topics that interest you, though it might be best to begin with either of these:

- Unfair Practices: *Fair Trading Act*
- *Fair Trading Act*: What's New

Another tip sheet you might want to look at is *Dealing with Door-to-Door Sales*.

If you'd like to see the statute in its entirety, go to this website:

<http://www.qp.gov.ab.ca/index.cfm>

Once there, enter the key words *Fair Trading Act* in the "Catalogue Search" field. You'll note that there is also a *Fair Trading Amendment Act, 2005* which you may wish to look at as well.

You've probably noticed some overlap in the case of the *Fair Trading Act*. The common law, for instance, already protects consumers from fraud, and it offers some people—such as those with mental impairments—protection from being taken advantage of. What's more, the federal *Competition Act* has already made misleading advertising illegal.

The *Fair Trading Act*, however, extends common-law protection, and it spells things out much more concretely. It also makes it easier for victims of unfair practices to get compensation than the federal statutes do.

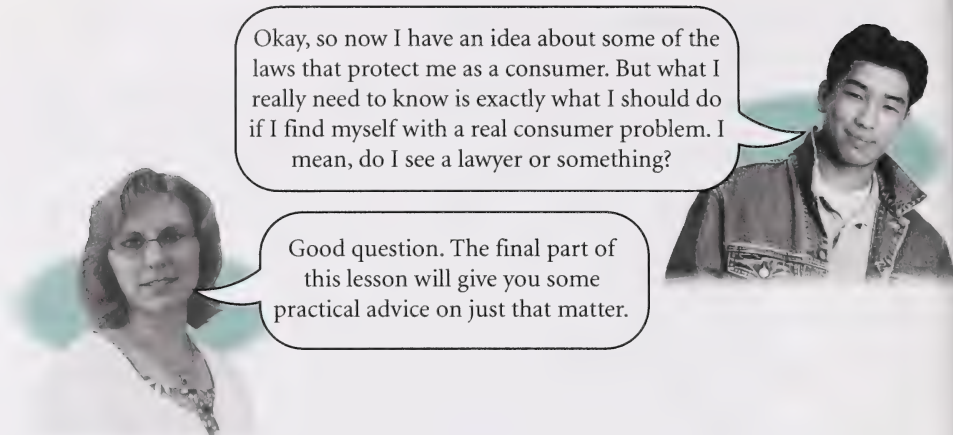


Going Further

In this section you've seen that one of the chief concerns in the area of consumer law is to protect individuals from misleading and fraudulent statements and advertising. The law of contracts offers protection from fraud when sellers deliberately mislead buyers on important matters; and both the federal *Competition Act* and Alberta's *Fair Trading Act* offer more precise explanations of just what sort of selling practices are illegal.

With a partner, if possible, have some fun and create an advertisement that breaks as many of the laws against misleading statements as you can. Or, write a short skit or dialogue illustrating a salesperson using as many illegal selling techniques as you can think of. Refer to the material in this lesson for ideas.





Okay, so now I have an idea about some of the laws that protect me as a consumer. But what I really need to know is exactly what I should do if I find myself with a real consumer problem. I mean, do I see a lawyer or something?

Good question. The final part of this lesson will give you some practical advice on just that matter.

Dealing with a Consumer Problem



So what do you do if you think you've been illegally victimized in a business transaction?

There are various routes that you can follow, but the basic rule is that you should try the simplest, fastest, and most convenient method of solving the problem first—and that usually means going straight to the person you feel has cheated you, or treated you unfairly, and try to work things out. If this fails, you can try other approaches; ultimately, you could end up consulting a lawyer and going to court.

What follows is a list of steps you can take to solve a consumer problem. It's arranged roughly from simplest to most involved:

- Complain to the seller.
- Contact the Better Business Bureau in your community.
- Contact the Alberta government's Consumer Information Centre.
- Contact the federal Office of Consumer Affairs of Industry Canada.
- Consult a lawyer.

Complain to the Seller

If you've bought a product or service you aren't satisfied with, you have the right to complain to the seller. You can take the purchase back and explain your problem, you can telephone the store or company and speak to the salesperson, or you can write a letter of complaint.

Whichever method you choose—but especially with a letter—be sure to include all the necessary information and clearly explain your problem. Stay calm (anger usually won't make people want to help you), but be firm. Propose a solution that would satisfy you. If you get no satisfaction from the person you're communicating with, insist on seeing someone in a position of higher authority.



Contact the Better Business Bureau

The Better Business Bureau (or BBB) is a non-profit organization with branches in major cities across North America. Its purpose is to improve relations between consumers and local businesses. To do this, it provides consumers with information on local businesses, and it handles consumer complaints.

If you complain in writing to the BBB, you'll be put in touch with someone in a position of responsibility in the company with whom you have a dispute in the hope that you can work out a resolution. If that doesn't work, the Bureau may appoint a **mediator** to help the two of you solve the problem. This service is free of charge.

If all this fails, the BBB will keep your complaint on file. Then, when other consumers inquire about that company, they'll be told your problems. That way you'll be helping others and you'll have the satisfaction of knowing that the offending company is losing at least some of its business.

Going Further

To learn more about the Canadian Council of Better Business Bureau, to get the contact address of the one nearest to you, and even to learn how to file a complaint, go to this website address:

<http://www.canadiancouncilbbb.ca/>

mediator: an independent third party who works at helping the parties to a dispute come to an agreement



Contact the Consumer Information Centre

If you can't get satisfaction through either of those first two methods, you might try contacting an information officer with the Consumer Information Centre (part of Alberta Government Services). Call 780-427-4088 in Edmonton or dial, toll free, 1-800-427-4088 elsewhere in the province. If this officer recommends that you file a formal complaint, you can go online and complete a complaint form—or ask for a printed form to complete. Normally, however, while a complaint of this sort may result in a company's being punished, you're unlikely to receive compensation for a loss.



Going Further



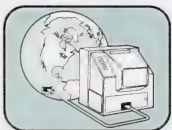
To learn more about filing a consumer complaint with Alberta Government Services, go to this website:

<http://www3.gov.ab.ca/gs/services/consumer/>

Contact the Federal Office of Consumer Affairs of Industry Canada

The Office of Consumer Affairs of Industry Canada will also investigate consumer complaints, though complaints registered here are more likely to lead to criminal prosecutions than to quick resolutions for people who feel they've been cheated.

Going Further



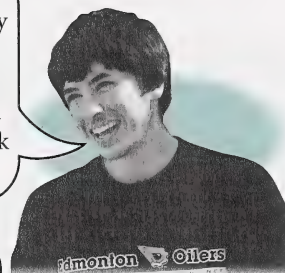
Consumer Connection is a website operated by Industry Canada's Office of Consumer Affairs. This site will supply you with a wealth of consumer information. If you can, spend some time browsing through the various offerings on this website. Note, for instance, the "Complaining Effectively" button on the left-hand side. It will give you a good deal of information about all aspects of consumer complaints—including much more detailed contact information than this course can supply. Here is the address:

<http://strategis.ic.gc.ca/epic/internet/inoca-bc.nsf/en/Home>

Consult a Lawyer

Ultimately, if you have a serious consumer complaint for which you think you deserve compensation, you should likely consult a lawyer. If you do this, you'll be sure of getting sound legal counsel, but it will cost you money. It may take a lawyer only a letter or two threatening legal action to convince the business that has wronged you to make amends, but there's always the chance that your case will end up in the courts. This can be expensive. If your case involves less than \$25 000, it will go to Provincial Court, Civil Division (also known as Small Claims Court); and here you don't need a lawyer to plead your case. For anything over a very small amount, however, it's usually best to have professional legal help.

I know one step that hasn't been mentioned that won't cost you anything and that can get you really fast results—contacting a TV or radio consumer complaints investigator. If the investigator thinks you've got a good case, your story will be aired on the news; and that kind of publicity scares the heck out of shady businesses.



Good idea. Of course, not every story makes it to the evening news, but you're right in saying that this has proven to be a fast and effective way to make businesses suddenly very happy to settle things to your satisfaction.



- 16.** You buy a used car from a dealership, trusting the assurances of the salesperson that the vehicle is in good shape. Six weeks later, you find a pool of antifreeze on your driveway. Your local mechanic inspects the vehicle and informs you that the head gasket must be replaced—at a cost of \$400. The mechanic tells you that it's an old leak that had been temporarily stopped up by an additive that was deliberately put in the antifreeze.

You complain to the salesperson, but you get nowhere; so you decide to write a letter to complain to the owner of the dealership. Write your letter of complaint, remembering that you're not just writing to blow off steam; you have a consumer problem to resolve.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

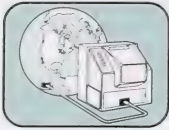
Keeping Informed

Of course, if there's one thing better than solving a consumer problem to your satisfaction, it's avoiding the problem in the first place. And the best way to avoid problems is to get the information you need to make wise consumer decisions—information on such things as the track records of businesses you may be dealing with and the quality of products and services you wish to buy.

But how do you get information of this sort? There are many different ways. Here's a list of a few reliable sources of information. Remember, in a world where *caveat emptor* is still the basic principle, it's up to consumers to keep informed and know what they're doing.

- You can contact the Better Business Bureau in your area to ask about the reliability of particular local businesses.

- You can contact the Consumer's Association of Canada (CAC) or refer to issues of its bimonthly publication *Canadian Consumer*. This non-profit organization was set up in 1947 to inform, protect, and represent consumers. It regularly tests products on the market and publishes its results in the *Canadian Consumer* magazine, along with a good deal of other helpful consumer information. The Alberta branch of the CAC operates a consumer information line in Edmonton. You can get more information at this website:



<http://www.consumer.ca/>

- You can learn to look for the CSA (Canadian Standards Association) label on products (see page 534 of your textbook). The CSA is another independent, non-profit organization established to help consumers. Its role is to develop standards of safety and performance and to test products to see that they meet those standards. These standards have no real legal force, but governments often use them to base their own laws. All electrical goods sold in Canada, for instance, must be certified by the CSA.
- You can obtain information from both the federal government's Office of Consumer Affairs (a branch of Industry Canada) and the Alberta government's Consumer Information Centre. Both organizations publish material in print and online format explaining consumer laws in simple, easy-to-understand language that's intended for ordinary people, not lawyers. See earlier Going Further activities for website addresses.
- You can get consumer information from a variety of other sources. Examples might be consumer-advice columns in newspapers and magazines and literature published by specific industry organizations such as the Canadian Life and Health Insurance Association and the Automobile Protection Association (APA). The APA publishes a book each year called *Lemon-Aid*, which is a very popular source of information on new and used cars.

And that's the end of your look at legislation designed to protect the consumer. This only scratches the surface, but it should have given you a better idea of where you stand legally whenever you find yourself making business transactions. If you choose to do the next lesson—an optional activity—you'll be looking at a particular type of transaction not covered by most of the legislation you've looked at so far—making investments.

Going Further

The Dial-A-Law service offered by Calgary Legal Guidance (mentioned earlier in this course) has several recordings in the area of consumer law. You can call Dial-A-Law at 234-9022 in Calgary or, toll free in Alberta at 1-800-332-1091. Here are a few recordings you might want to listen to:

- | | |
|------------------------------|---------------------------|
| • 511 Door to Door Sales | • 515 Collection Agencies |
| • 512 Buying on Time | • 523 Car Repair Problems |
| • 513 Unfair Trade Practices | • 516 Credit Cards |

Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer questions 5 to 8.

Suggested Answers

1.

Transactions	Sale of Goods Act
Johann's Auto Repair agrees to regrind the valves in the engine of Tristan's car for \$400.	
Yolanda sells all her shares in the LMN Company to Darlene for \$43.75 a share.	
Armand agrees to sell his house to Mary-Lynn for \$150 000.	
Bach-Chu buys a clarinet at Casper's Second-Hand Store.	✓
Brenda agrees to pay Louis \$200 for the use of Louis's car for a week.	
Wes agrees to baby-sit Claudia's son if Claudia works out his income tax for him.	

Note: Only the one transaction would be covered by the *Sale of Goods Act*. The first is a contract for a service rather than a purchase; the second involves the sale of stocks; the third is a situation in which real (as opposed to personal) property is being transferred; the fifth is a case of renting, not buying; and the last involves an exchange of services in a barter situation.

- Yes, you're protected. Warranties displayed on signs and in ads are binding. However, it's always best to get the merchant to put such guarantees in a written document that you can keep so you have proof that they were given at the time of purchase.
- The three implied conditions and warranties are that
 - the seller owns the goods and has the right to sell them
 - the goods are of "merchantable quality" and are suitable for their required purpose
 - the goods actually transferred correspond to any samples or descriptions given to the buyer
- Paige owns the camera; it's a basic principle of law that you can never get title from a thief. If Konstantin wants to get his money back, he can bring a legal action against Joel under the *Sale of Goods Act* for breach of a condition.
- Yes, Ms. Nijjer could likely commence a successful action under the *Sale of Goods Act*. Clearly the food processor wasn't of merchantable quality, so a fundamental condition was breached.
- No, the Toronchuks can refuse to accept delivery since the samples shown them don't correspond to the product actually supplied them. However, the Toronchucks should act quickly. If they were simply to tell the trucker to store the wood in their garage without looking at it and discovered the problem sometime later, it would be too late to take action.

7. a. No, Ms. Owen isn't within her rights. Her right of lien disappeared when Kim took possession of the kayak.
- b. Ms. Owen would be best advised to sue Kim for the \$1800 still owing her.
8. Charts will vary in format and, to some degree, in content. Bearing this in mind, compare yours with the one that follows.

Marketing and Sales Techniques Prohibited by the Competition Act	
Conspiracy	<ul style="list-style-type: none"> • price fixing—two or more parties agreeing to set prices • market sharing—competitors splitting up the market to reduce competition • bid-rigging—suppliers or bidders reaching a secret agreement to raise their prices
Misleading Advertising	giving customers untruthful information, e.g., advertising that something is on sale when the price being asked is the regular one
Deceptive Marketing	engaging in unfair practices and fraud—e.g., using telemarketing scams to take money from vulnerable people

9. a. This is an example of bait-and-switch advertising
- b. The statute in question is the *Competition Act*.
- c. Answers will vary. Sometimes merchants can prove that they honestly intended to sell the advertised item at the advertised price but the suppliers failed to deliver them or that an "act of God" occurred that prevented the sale (for example, a warehouse burning down or an ice storm making roads impassable for trucks). Another defence is that the seller ordered a reasonable number of items and was surprised that they sold out so quickly (in which case, the court has to determine what a "reasonable" supply would be).
- d. Answers may vary. The usual step merchants take is to give such customers "rainchecks," which guarantee them the desired article at the advertised price as soon as a new shipment can be brought in.

Situation	Statute
A cookie manufacturer decides not to list peanut oil in the ingredients of a new line of cookies for fear of scaring off people with peanut allergies.	the <i>Consumer Packaging and Labelling Act</i>
A seller of bulk foods uses a substandard, cheaply made scale to weigh products for sale.	the <i>Weights and Measures Act</i>
An importing company imports a sauce manufactured in filthy conditions and containing some questionable ingredients.	the <i>Food and Drugs Act</i>
The manufacturer of a household cleaner fails to put a poison symbol on a can of highly corrosive drain de-clogger.	the <i>Hazardous Products Act</i>
An automobile manufacturer knows one of its models is unsafe if struck from the rear but decides it's too expensive to recall the vehicles for repair.	the <i>Motor Vehicle Safety Act</i>

- 11.** The thinking is that if people go to someone's place of business—a store, for example—they can leave whenever they want to. If they aren't certain about making a purchase, they can go home and think things over. When a salesperson enters a person's home, however, that person can feel trapped. Door-to-door sellers using high-pressure sales tactics can intimidate people into buying things they don't need or want—perhaps just to get these people out of their homes.
- 12. a.** The principle of *caveat emptor* has always governed contract law—the principle that people who make deals won't be bailed out by the courts if it turns out later that the deals weren't good ones. Some feel that this principle is violated by laws like the *Unconscionable Transactions Act*, which allows the courts to alter the terms of a contract if someone has agreed to too high a rate of interest. Such statutes, these critics claim, remove people's responsibility to investigate situations and to negotiate the best deals they can get.

The fact is that almost all consumer-protection legislation modifies the principle of *caveat emptor* in an attempt to help level the playing field for consumers in a complex business environment. While most people support this sort of legislation, it's been claimed by some that it's almost replacing the rule of *caveat emptor* with that of *caveat venditor*—"Let the seller beware."

b. Answers will vary. Were you able to defend your ideas?

- 13.** Raquelle likely did this in order to establish a good credit rating with the credit bureau. It's ironic, but true, that people who manage their money so well that they never have to borrow may have more trouble if they ever do have to take out a loan than their neighbours who borrow regularly. That's because they haven't established a credit rating—a history of taking out loans and repaying them. This doesn't mean you should go out and borrow money to establish a credit rating, but you should be aware that credit ratings exist and that they can be important if you ever do need money.
- 14.** This is a trick question. All these practices are, in fact, prohibited by the *Act*.
- 15.** Answers will, of course, vary. Here's a list you can compare with your own; each sort of statement is followed by an example.
- saying an item or service has a quality, component, approval, or anything else that it doesn't have (for example, saying a kettle will boil water in two minutes if it really takes seven)
 - saying that suppliers have a status they don't have (for instance, saying a merchant is an "approved dealer" when he or she really isn't)
 - saying that an item has a quality or grade it hasn't got (for instance, claiming that Grade B eggs are really Grade A)
 - saying that used goods have been used differently than they really have been (for example, saying that a second-hand washing machine was owned by a single woman when it was really used in a laundromat)
 - saying that used goods are new (for example, selling a demonstrator model as new)
 - saying that goods that have been reconditioned are new (for instance, selling re-treaded tires as new ones)

- saying that goods or services are available at a certain price for a reason that isn't true (for example, untruthfully saying that goods are marked down because of a going-out-of-business sale)
- saying that goods or services will be available while not really intending to have them available at all (for instance, drawing customers into a store with a product advertised at a low price and then using bait-and-switch selling to get them to buy a pricier item)
- advertising sales that don't really exist (for example, saying that shoes are on sale at 30 percent off when in fact they're being sold at the usual price)
- saying that a part or repair is needed when it really isn't (for example, telling a customer that the transmission gears on his car need replacing when the bands just need readjusting)
- lying about your purpose in contacting a possible customer (for instance, phoning a person claiming to be conducting a survey on reading habits when you're really selling books)
- lying about a person's rights relating to a consumer transaction (for instance, sending people books in the mail and telling them that if they don't return them in ten days, they'll have to pay for them)
- suggesting that goods are available in greater quantities than customers might reasonably suppose (for example, advertising lamps at a "low, low price" without indicating that there are only two or three such lamps available)
- giving an estimate for the price of goods or a service that's significantly less than you know the real price will be (for example, telling a customer that it will cost roughly \$200 to do a repair job on his or her plumbing knowing that the real price will likely be twice that amount)
- burying the real cost of a product or service in an ad while giving prominence to the cost of some part of it (for instance, advertising dancing lessons at only \$30 per lesson but hiding the fact that customers must agree to take 20 lessons to qualify for that low price)

That's quite a list, isn't it? Did you think of other sorts of statements?

16. Everyone's letter will, of course, be different. In assessing your own, ask these questions:

- Is it neat, clear, and to the point?
- Is the tone polite but firm?
- Does it contain all the necessary details (for example, the date of the transaction, the model of the car that was bought, the price you paid, the salesperson's name, the name and address of your local mechanic, your mechanic's assessment of the situation, and so on)?
- Does it suggest a solution (for example, that the dealership pay the repair costs)?

You might wish to suggest that in representing the vehicle as in good condition, the salesperson is guilty of fraud, and that the dealership can be prosecuted under the *Fair Trading Act*. However, at this initial stage, it's probably a good idea not to sound threatening. It's always best to solve problems of this sort simply and amicably, if that's at all possible.

Whenever you're involved in a business transaction, remember to save all the documents you might need so you can use them in situations like this—for instance, sales receipts, warranties, and so on.

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Lesson 3: Making Investments



If you're in high school, chances are that you aren't thinking too seriously just yet about investing your money. You're probably thinking more about financing your plans for future education, buying that vehicle you desperately want, or finding a way to get to Europe or maybe South America for the summer.

And that's perfectly normal.

However, as you get older, enter the work force, and begin to acquire possessions, you should also start to regularly invest a percentage of your income to give yourself security and financial freedom later in life.

This lesson can't possibly teach you everything you should know about making investments, but it will give you a general idea of the principal types of investments available along with their risks and tax implications.



But when I do get a good job, I'm going to have to spend every cent paying back student loans, making rent payments, and buying stuff like furniture, a car, and all that. And now I'm also supposed to be investing for my retirement! Not possible.



I know it's very hard for young people to think that far into the future—and even harder to come up with the money to invest. But since the amount of money your investments make for you depends to a large degree on how long they sit there compounding, it's wise to begin investing in life as early as you can—even if it's only a few dollars a month.

Note carefully that, because of the amount of material in this course, this has been designed as an optional lesson. There won't be any questions on the content of Lesson 3 in your Assignment Booklet or on the final test. If you choose to do this lesson, however, you'll get a good basic grounding in the principles and regulations involved in making investments.

Types of Investments

Imagine a relative has died and left you \$10 000. You decide to do the responsible thing and invest it. But where will you put it?

Should it go into a bank account? That would be safe, but the interest the money would make wouldn't amount to much. You've heard of stocks and bonds, but just what are they and how do they work? And what about those mutual funds they advertise everywhere during RRSP season? And what is an RRSP anyway? Are there laws protecting investors who put their money in places like these? If so, how do they work?



The first thing to do in answering questions like these is to look at some of the different sorts of investments available. The material that follows discusses four popular ones. These certainly aren't the only types of investments that you can make; and even within these four types, you'll find that there's some overlap. Nevertheless, understanding this four-fold classification should help you get a feel for the different ways you might invest that \$10 000 left by your relative.

Non-Traded Debt Investments

Despite their unfamiliar name, non-traded debt investments are probably the simplest and most familiar ways to invest money. Basically, these are investments that earn you interest. In essence, you lend an institution—a bank, for instance—your money, and in return the institution pays you interest for the loan. This is why these are called **debt investments**. Here are some examples of non-traded debt investments:

BANK



- Savings accounts in institutions like banks and credit unions really involve customers lending the banks the use of their money. In return, the bank pays interest into the accounts at regular intervals and guarantees investors that at any time they can withdraw the whole amount.

- Term deposits, offered by similar sorts of institutions, are much like savings accounts, except that a specified amount of money is loaned for a specified (or *fixed*) term. Term deposits normally offer higher interest rates than savings accounts, but in return customers agree to leave the money invested until the term is up. If they change their minds, there's usually a financial penalty to pay. Sometimes investors give up all right to their money for the duration of the deposit's term.

- Guaranteed investment certificates (commonly called GICs) are similar to term deposits, except that they're often (but not always) for longer terms and the investment is locked in even more tightly. If you buy a GIC, you normally give up all right to get the money back until the agreed-upon time is up, though today a whole variety of GICs exists offering different possibilities in this area. In return, you get an even higher rate of interest than you would on a term deposit.

Traditionally, the only way to put an end to a GIC before the term is up has been to die, in which case the agreement is terminated and your estate will get the money. Today many GICs also allow you to redeem your investment each year on its anniversary date.



- Canada Savings Bonds (CSBs) have for many years been a popular type of non-traded debt investment. They're offered by the Government of Canada and are available—usually in the fall—at banks and other financial institutions. When you buy a Canada Savings Bond, you're really lending money to the federal government. You can keep a bond until it reaches **maturity** ten years in the future, or you can cash it at any time, collecting the interest it's earned.

interest: money paid by borrowers to those who lend them their money

debt investments: investments in which you lend your money to another party in return for interest payments

term deposit: a type of investment whereby money is lent by an investor to an institution, such as a bank, for a fixed term in return for a stipulated rate of interest

guaranteed investment certificate (GIC): a type of investment much like a term deposit except that it usually cannot be cashed in before a stipulated date, and frequently a minimum amount of money is required

Canada Savings Bonds: debt-investment instruments issued by the federal government that can be cashed in at any time

maturity: the time when an investment and the interest it has earned is due to be paid back

liquidity: the ability of an investment to be converted into cash

This last feature—known as **liquidity**—is one advantage CSBs have over GICs. If you may need the money before your investment reaches maturity, a Canada Savings Bond is a good bet, though today many people find this liquidity poor compensation for relatively low rates of interest. As a result, CSBs are no longer as popular with investors as they once were.

1. Investors always want a good return on their investment, but the institutions they lend their money to want something back. When you put your money into a non-traded debt investment, what do you sacrifice in order to get a good rate of return?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Traded Debt Investment

bonds: investment instruments issued by governments and corporations that can be redeemed at a set rate for a stipulated amount of interest, and which can in the meantime be traded for whatever price the market will bear

debentures: investment instruments much like bonds but less secure

treasury bills: short-term debt instruments issued by the government that are bought at a discount and redeemed for a greater face value upon maturity

face value: the amount the issuer of a bond or similar investment instrument promises to pay for it upon maturity



Traded debt investments, like non-traded debt investments, involve lending your money to another party in return for interest. Three types of traded debt investments are

- bonds
- debentures
- treasury bills

Basically, all three behave much the same way; so in the interest of simplicity, this discussion will focus on bonds—the best-known example of this type of investment.

Bonds are issued by governments at various levels and by corporations. You can buy bonds—and other types of traded debt investments—from stockbrokers. You pay a stipulated amount for the bond on the understanding that at its maturity date, which may be quite soon or many years in the future, it will be redeemed (bought back) by its issuer for a specific amount of money—called the bond's face value. In the meantime, the bond pays you interest.

To this extent, bonds sound much like the other forms of debt investment you've been looking at. The difference is that bonds can be traded—that is, bought and sold in the **marketplace**—up until their maturity date. This makes bonds riskier investments than non-traded debt securities, because if you sell them, it's only at their maturity date that you're guaranteed of getting their face value.



Normally, when interest rates go up, the value of any bonds you already own—what you can expect to sell them for—goes down. Conversely, when rates drop, you may be able to sell a bond for even more than you paid for it. Of course, if you wait for the bond to mature, you're guaranteed of getting its face value when you sell it back to the government or company that issued it.



So I might be able to make money from bonds in two ways. First, I can get interest; and second, if the value of the bond goes up and I sell it, I can make money that way too.

capital gain: the profit investors make when selling things for more than they paid for them

capital loss: the loss investors occur when selling things for less than they paid for them

That's right. Money you make when you sell an investment for more than you paid for it is called a **capital gain**. Of course, if you need some money right away and have to sell a bond when it's value is low, you'll lose money. That's called a **capital loss**.



Because the value of traded debt investments goes up and down, these are considered higher risk investments than things like term deposits and GICs. But along with that added risk goes a better chance of making more money—through capital gains. Of course, if you simply keep the bond till its maturity date, you'll know just what you'll get for it, so you'll really lose money only if you're forced to sell low.



There is one thing you should note. Despite their name, Canada Savings Bonds aren't real bonds. They can't be traded, their value never changes, and they can never generate capital gains. When people speak of bonds and the bond market, it's traded debt that they're referring to.

2. The preceding discussion told you that when interest rates go up, the value of a bond goes down. Remembering that a bond offers a fixed rate of interest throughout its life, why would this be so?
3. You have \$1000 to invest, and you know you won't be needing it for ten years. You can either invest it in a Canada Savings Bond at an interest rate of 5 percent, or you can buy a true bond, also issued by the Government of Canada, that offers the same rate of interest. Both investments mature in ten years. Which would you choose? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Equities

equities: shares in a company that can be bought or sold in the marketplace

shares: equities (or stocks)

stocks: equities (or shares)



Equities are very different from debt investments. When you invest in equities, you're not lending anyone your money; rather, you're actually buying a small part of a business. As an owner in the business you've bought into, you share in the profits it makes, but you also share in any losses it suffers.

A more common word for equities is **shares** (because you buy a share of the company) or **stocks**. Put simply, they work like this: The XYZ Company, which produces industrial widgets, wants to raise money, so it issues shares and sells them in the marketplace. Imagine that a company issues a million shares and sells them for \$10 each. You buy 100 shares at a total cost of \$1000. You now own 1/1000th of the company. If the company does well, you'll make money. If it does badly, you'll lose.



I don't quite see how I make or lose money. If I'm not getting any interest, where does any profit come from it?

dividends: payments a company makes to shareholders in accordance with the number of shares they own—often paid at regular intervals

You can make money in equities in two ways—through capital gains, which you've already been introduced to, and through **dividends**. Read on.



One way to make money through stocks is by way of capital gains. Here's how it works: Let's say the XYZ Company does very well and makes good profits selling widgets. Now lots of people want to own shares in it, and they're willing to pay \$15 a share. You can sell those 100 shares you bought at \$10 a piece for \$15 each, thereby making a profit on your investment of 50 percent through capital gains. Of course, you might hang onto your shares in the hope that their value will increase even further.

Knowing when to sell a stock and when to hang onto it is always tricky. If the company suddenly goes into a slump, you just might find those shares hard to sell at \$5 apiece or even less. If the company folds, they might become altogether worthless.

stock market: the market in which equities are bought and sold

blue chip stocks: shares in well-known companies with proven records and which have paid out dividends regularly for at least 25 years

growth: the increase in value of shares that will result in capital gains when the shares are sold

preferred shares: shares that pay their owners dividends and a guaranteed cash value if the issuing company goes out of business

common shares: shares that are bought and sold on the market and that have the potential to increase or decrease in value depending on what the market dictates



Wow! That sounds too risky for me. Forget the **stock market**. I think I'll stick with debt investments.



It's true that equities are inherently riskier than debt investments, but the chance of making lots of money is also greater. And you can always buy what are called **blue chip stocks**—shares in companies with proven track records. Of course, the rule is that the lower the risk, the lower the chance of real **growth**.

A second way to make money in equities is through what are called *dividends*.

Dividends are simply cash payments some companies make at regular (or sometimes irregular) intervals to shareholders. If the XYZ Company is doing well, it might pay its shareholders a dividend of \$1 four times a year for each share they hold, in which case you'd get \$400 a year, for your 100 shares. Not all stocks pay dividends.

Preferred shares normally do, but they're a special case. The most popular type of equities, called common shares, may pay dividends, but their chief potential for profit is through growth—in other words, through capital gains.

4. You have \$1000 that you plan to invest in equities, and you have to decide what company to invest it in. You've narrowed your choice down to two. The ABC Company is a young, untested organization full of talented people who seem to be in on the ground floor of a new technological innovation. By contrast, the LMN Company has been in business for 60 years. It has a wonderful track record, a careful management team, and a reputation for solid, if unspectacular, performance.

Which company will you invest in? Give reasons for your decision.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.


Mutual Funds

mutual fund: a pool of money managed by a professional or group of professionals and invested in a large number of different securities

Even if financial investments are the farthest thing from your mind, you've probably heard a good deal of talk about **mutual funds**. It's hard to turn on the television without encountering some mutual fund company advertising its services—especially around RRSP season (You'll be learning more about RRSPs shortly.) But just what is a mutual fund?


Actually, mutual funds aren't a separate category of investment at all; they're really just a convenient way of making investments of the sorts you've already been looking at. A mutual fund is simply a large collection of investments administered by the professional managers employed by the fund company.

A mutual fund might, for instance, invest in shares in a wide variety of Canadian companies. Then individual investors can buy *units* in the fund. In this way, the investors are buying equities, but now they don't have to research different companies, make difficult decisions, and put their money into only one or two businesses. Instead, in buying units in the fund, they're spreading their money across all the businesses the fund is invested in, and they're leaving the decisions up to the professional money managers in charge of the fund.



I think I get it. That way if the shares of one company that the fund company has invested in lose value, only a fraction of the fund's money is lost. That means there's less risk for investors.

portfolio: the collection of investments held by an investor



That's right. And in having a pro pick stocks for you, you should have a stronger **portfolio**—at least in theory. Of course, you have to pay for these benefits. Mutual funds charge management fees, and sometimes you have to pay a broker if you want to buy or sell units. But they do offer a good way for inexperienced investors to make relatively wise investments.

When people speak of mutual funds, they often mean funds that invest in equities, but there are funds that invest in other securities as well. Here are some of the more common types of mutual funds:

- Equity funds invest in common shares with the intention of making capital gains. Equity funds that invest in young, aggressive companies are often called *growth funds*.
- Fixed-income funds invest in debt instruments like bonds with the intention of generating interest income.
- Dividend-income funds invest chiefly in preferred shares with the intention of creating dividend income (and perhaps some capital gains).

- Balanced funds invest in common shares, preferred shares, and bonds to generate three types of income—capital gains, dividends, and interest.
- Money-market funds invest in short-term debt instruments, like treasury bills, with the intention of making interest income.

Some mutual funds invest only in Canadian securities. Others are internationally focused. All this means that investors choosing to buy into mutual funds still have some serious decisions to make, even though the nuts and bolts of deciding on specific stocks, bonds, and other securities is looked after for them.

5. Some investors feel that balanced mutual funds are the safest place to put their money. Why would they feel this way?
6. You have \$1000 to invest, and you've decided on equities. You have a hot tip from a friend that shares in the PDQ Company are likely to take off shortly. Would you invest your money in this company or in an equity mutual fund? Give reasons for your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

You've now looked at four very common types of investments. Of course, there are many other places you could put that \$10 000 left by your relative. Here are a few of them:

- real estate (something you should now know a bit about)
- gold and other precious metals
- income trusts
- commodities (any products like metals, coffee, or lumber)
- insurance policies
- art and collectibles

Unfortunately, in a Legal Studies course there's simply no room to discuss investment options at greater depth. What you do have to do next, though, is examine some of the risks involved in the four types of investments you've been introduced to. And that will involve a look at a few of the laws affecting investments.

Going Further

The Internet offers a vast wealth of information on investing. Just use any of the terms discussed or presented here (for example, "income trust") with a search engine, and with a bit of time and perseverance, you'll be able to learn as much as you want to. Alternatively, here are two popular Canadian websites devoted to investments:

<http://money.canoe.ca/>

<http://www.moneysense.ca/>

Because these sites are targeted chiefly at people with some investment knowledge, you might find them confusing at first, but if you get into the habit of visiting them frequently and gradually finding your way around the world of investing, bit by bit you'll acquire the knowledge you'll need to become a wise—and, hopefully, successful—investor



Risk and Reward



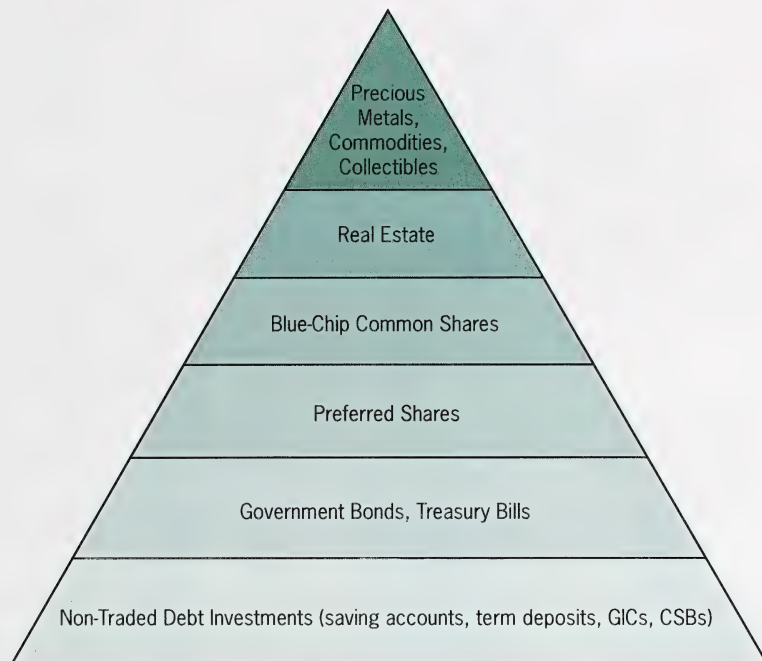
You may have noticed one thing in the preceding discussion on investments—that the chance of making a high return on your investment goes up with the degree of risk involved and vice versa. This is a fundamental rule of investing money. If security is important to you, you should stick with low-risk, low-return investments.

If you aren't as security conscious and you hope to make a lot of money, you should look at higher yield, higher risk investments. Of course, most investment counsellors advise people to balance their portfolios by including both conservative and more speculative investments, the precise mix depending on the individual and his or her goals.

The diagram that follows should give you a general idea of where different sorts of investments sit on the risk scale. Risk increases as you move from the bottom to the top of the diagram.

The diagram is shaped like a pyramid to give the idea that a portfolio should usually be anchored in a solid base of reasonably secure investments. Highly speculative investments should only be indulged in if you have money you can afford to lose and/or a long time in which to make up any losses you might incur.





The CDIC

Just what makes those investments at the bottom of the pyramid so secure? Actually, it depends on the sort of institution you've invested with. If you've got a savings account, a term deposit, or a GIC in one of Canada's chartered banks or a trust company (which behaves much like a bank), the security of your investment comes from a Crown corporation called the Canada Deposit Insurance Corporation, usually referred to simply as the CDIC. This body was established in 1967 by a federal statute called (not surprisingly) the *Canada Deposit Insurance Corporation Act*.

The principal role of the CDIC is to insure the money that anyone has deposited with banks and trust companies up to a maximum of \$100 000 per person, per institution.

Here's an example: Arne has the following investments at his local bank:

Savings account:	\$ 5 000
Three-month term deposit	\$10 000
Five-year GIC	\$40 000
TOTAL	\$55 000

Because Arne's investments total less than \$100 000, the CDIC guarantees them. Should his bank collapse, his money is still safe.



What if Arne had
\$105 000 in the bank?

That last \$5000 wouldn't be covered by
the CDIC. One easy thing Arne could do
is simply walk down the street and deposit
that \$5000 in a different bank. If the first
\$100 000 were in the Bank of Montreal,
for instance, he could put the rest into an
account with the Royal Bank.
Then everything's insured.



The CDIC doesn't insure everything up to \$100 000 invested with a bank. The principal investments it does guarantee are

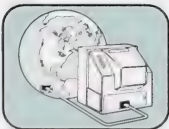
- savings and chequing accounts
- term deposits (with a maturity date of no more than five years in the future)
- GICs (also with a maximum maturation period of five years)

Investments in foreign currencies (for example, in U.S. dollars) treasury bills, and mutual funds offered by the bank aren't insured.

7. Nandia, having learned about the CDIC, goes to her local bank and puts \$5000 into a balanced mutual fund offered by the bank. She puts another \$3000 into a five-year GIC. Are Nandia's investments guaranteed by the CDIC?

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

Going Further



Here's the address of the CDIC website. If you're interested, you can learn all about the insurance it provides in a good deal more detail.

<http://www.cdic.ca/?id=100>



Credit Unions

Credit unions work much like banks, but they're set up rather differently. In Alberta, credit unions are authorized by the *Credit Union Act*, a provincial statute. The CDIC doesn't guarantee investments in credit unions, but money on deposit with these institutions is still safe: it's insured by the Credit Union Stabilization Corporation, which was created by the *Credit Union Act*. This corporation actually goes even farther than the CDIC: it guarantees money in accounts, term deposits, and GICs of any maturation length, and there's no limit on the size of the investments. The Credit Union Stabilization Corporation is, in turn, guaranteed by the government of Alberta; that means that the province is really guaranteeing your money—pretty good insurance.

Treasury Branches

Albertans, unlike most Canadians, have the option of doing their banking directly with a branch of the provincial government. Alberta Treasury Branches were created by a provincial statute in 1938. Treasury Branches aren't members of the CDIC, but the Province of Alberta guarantees money deposited with them with absolutely no ceiling and no maximum maturity date. Even U.S. dollar accounts are guaranteed.

Canada Savings Bonds, Government Bonds, and Treasury Bills

Canada Savings Bonds are a safe investment because the Government of Canada guarantees to buy them back at their face value plus any interest owing at any time. Likewise, treasury bills are safe if you keep them until they mature, because the Government of Canada promises to buy them back at their face value (if you sell before maturity, though, you have to take whatever price the market will bear).

Bonds and debentures issued by governments are guaranteed by the governments that issue them, though, like treasury bills, their face value is guaranteed only upon maturity. Corporate bonds and debentures are riskier investments since a corporation is far more likely to collapse than a government.



Yeah, and a government that runs into financial problems can always raise taxes. A corporation that goes into the red doesn't have that option.

That's right. That means that if you buy bonds issued by an old, highly respected corporation, chances are you'll be fairly safe; but if it's a newer, less-tested company, there's a lot more risk. Of course, the riskier the bonds, the higher the rate of interest they offer to attract buyers.



asset: anything owned that has monetary value

Remember that a corporate bond is only backed by the corporation and its assets. This makes investments of this sort inherently riskier than investments insured by governments.

Equities

There are no guarantees in the stock market. If you buy shares in a company, you're gambling that the company will stay afloat and the shares keep their value (and, it's to be hoped, increase in value). If you lose your gamble, there's no safety net to catch you.



stock exchange: a place where shares in companies are bought and sold

investment dealer: stockbroker—a person who buys and sells securities like stocks and bonds for customers

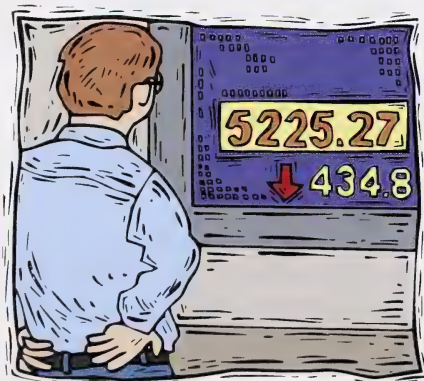
liquidate: sell assets to raise cash

This isn't to say that there's no regulation of the stock market. The Toronto Stock Exchange, like other stock exchanges, is highly regulated to protect investors. Also, the **Investment Dealers Association of Canada**, along with Canada's four stock exchanges, maintain a fund called the Canadian Investor Protection Fund. This won't protect you from losses if the stocks you buy go down in price, but it will protect you if the stockbroker you've left your money with should go under.

The bottom line, however, is that when you buy shares, you should investigate the companies in question carefully, because your investment won't be insured. Owners of preferred shares are in a somewhat safer position than those with common shares because, if a company is **liquidated**, they'll be paid something as assets are sold off. Owners of common shares are pretty much on their own.

Mutual Funds

growth stocks: stocks in aggressive, young companies that offer much potential for growth but relatively little security



As you've learned, mutual funds can invest in anything from high-risk **growth stocks** to very low-risk securities such as treasury bills. The same guarantees that come with the securities that the funds invest in protect those who buy the funds. However, there's nothing like the CDIC to protect the investments of people who buy mutual funds. In the 1990s, many people who had always invested in things like GICs and CSBs suddenly moved into equity mutual funds because interest rates were so low. Many of these so-called "GIC refugees" didn't realize that their investments were no longer insured. Some learned the truth the hard way.

prospectus: in the mutual fund industry, a document explaining the objectives, investments, and degree of risk of a fund

To minimize the chances of this sort of thing happening, each province and territory in Canada has Security Administrators who regulate those who sell mutual funds and other securities. In Alberta, the *Securities Act*, a provincial statute, requires that anyone buying units in a mutual fund be given a copy of the fund's **prospectus**, written in everyday language, along with other documents explaining the securities the fund invests in and the degree of risk they involve. Financial consultants are required to ensure that investors understand the investments they're making and that they're compatible with the investors' objectives and tolerance for risk. The law also requires that anyone selling securities in Canada must be registered. People selling mutual funds have to be licensed, and this involves passing the Canadian Securities Course.

8. You have \$120 000 in GICs with the Toronto Dominion Bank. Your friend has the same amount on deposit with the Alberta Treasury Branch. Which one of you has greater security for your investment? Explain.
9. You've decided to invest in a fixed-income mutual fund that buys bonds. You've read the prospectus, the financial statements, and the promotional literature of two funds. Fund A invests principally in government bonds while Fund B invests chiefly in corporate bonds and debentures. Over the last ten years, Fund A has produced a return averaging 10 percent while Fund B's average return over the same period has been 12 percent. Management fees of the two funds are identical.
- Explain the probable reason for Fund B's greater rate of return.
 - Is your investment guaranteed by either fund? Explain your answer.
 - In which fund will you invest your money? Give reasons.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

Investments and Taxes

Taxes! As a high school student, you probably don't worry too much about taxes just yet, but it would be hard to live in our society without hearing the constant stream of complaints about how highly taxed Canadians are. And, income taxes take one of the heftiest bites out of our finances of any form of taxation.

As a result, one of the things investors have to think about is how much of the money that their investments earn will be taken by the government in income tax. Calculating income tax is a complicated business, and it goes far beyond the scope of this lesson. One thing you should be aware of, however, is that income on different sorts of investments is taxed at different rates.



As you've seen, your investments can earn three different types of income for you:

- interest
- dividends
- capital gains

According to the *Income Tax Act*, a federal statute, the rate at which income is taxed is different for these three sorts of investment income.

Interest Income

Interest income, which is earned, as you know, by debt investments like savings accounts, term deposits, CSBs, and bonds, is taxed at the highest rate of the three. This rate, called your *marginal tax rate*, varies depending on how much money you've made in the year. Basically, the more you've made, the higher your marginal tax rate, up to a ceiling that's raised from time to time. All you really need to remember is that interest is taxed at the same rate as money you've earned on the job; it doesn't get any preferential treatment.

Dividend Income

Unlike interest income, dividend income from shares in Canadian companies does get preferential tax treatment. The way taxes on dividends are worked out is complex; but, put simply, there's a tax credit given to dividend income that results in an after-tax yield of roughly 1.25 times the after-tax yield of an equivalent amount of money earned in interest.



So if I invest in interest-bearing securities like GICs and you invest in preferred shares that pay dividends, and we both make the same amount of money on our investments, you'll end up with more in your pocket after we've paid our income tax?

That's right.



But why does the *Income Tax Act* set things up that way? Shouldn't all income be taxed at the same rate?



10. Can you answer that question? Try to suggest a reason why dividends from Canadian corporations would be taxed at a lower rate than interest income. If you can, discuss this issue with classmates or a study partner.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Capital Gains Income

Like dividends, capital gains are taxed at a preferential rate—and largely for the same reason. If you sell stocks or bonds for more than you paid for them, you pay tax on only 50 percent of the profit you make. The same holds true if you make capital gains by selling real estate or commodities. (If you sell your principal residence at a profit, you pay no tax at all on the capital gain.) And if you sustain a capital loss by selling something for less than you paid for it, you can use it to offset any capital gains you may have made.



11. Reid bought 100 shares in the HIJ Company at \$10 a share and sold them all a year later for \$13 a share.
- On how much money will Reid have to pay capital gains tax?
 - At a tax rate of 26%, what will Reid's capital gains taxes amount to?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

RRSPs



Registered Retirement Savings Plan:

a government-approved plan that allows savings for retirement to grow in investments that are sheltered from taxation until they're withdrawn from the plan

Have you ever noticed how difficult it is to turn on the television in January and February without having to watch ad after ad for investment companies? That's because this is prime RRSP season—the last few weeks the law allows people to put some money into Registered Retirement Savings Plans and so postpone paying tax on some of the preceding year's income.

Just what are RRSPs? Put simply, Canada's income-tax laws allow people to put a percentage of their earned income each year into investments that are sheltered from taxes—at least temporarily.

These investments can be of any of the types you've been studying and other types as well; the only difference is that they are registered in a special plan that protects them from taxes. Not only do you delay paying tax on the income you invest, but you also delay paying tax on all the income that this money creates in interest, dividends, and capital gains as long as it stays in the plan.

Of course, there's a catch to all this. When you turn 69, you have to stop contributing to your RRSP and begin making withdrawals. And you have to pay income tax on the money you withdraw.

Even though you eventually do pay tax on money in an RRSP, there are still two good reasons to have this kind of an investment plan:

- The money earned by your investments in the plan compounds over the years tax-free. Even if you do have to pay tax someday, all those tax-free years give your money a tremendous chance to grow.
- Most people are in a lower income-tax bracket when they're retired; in other words, because they make less money, they're taxed at a lower rate than they were when they were in the work force. By avoiding tax on income when they're in a higher bracket and paying it when they're in a lower one (when they're retired), they ultimately end up paying less.

The laws and regulations governing RRSPs are more complex than this brief discussion can show, and they're subject to change. Some of the rules that alter from time to time are those governing

- the percentage of earned income you can put into an RRSP each year
- the percentage of your RRSP that can be in foreign investments
- the age at which you must stop contributing to, and start withdrawing from, your RRSP

What's important at this point is simply that you be aware that RRSPs exist. When the day comes when you're ready to start making investments, be sure to investigate this excellent method of sheltering your money from taxes. Remember that the longer an investment can grow tax-free, the more money it will generate; therefore, the earlier you can start making use of the RRSP laws, the wealthier you'll be when you retire.

12. Aniela's earned income both last year and this year was \$35 000. She's examined the laws governing RRSPs and learned that her RRSP contribution limit is \$16 500 or 18 percent of her last year's earned income, whichever is less.

a. How much can Aniela contribute to an RRSP?

b. If Aniela is taxed at a rate of 17 percent, how much money will she save in taxes if she manages to contribute her maximum amount?

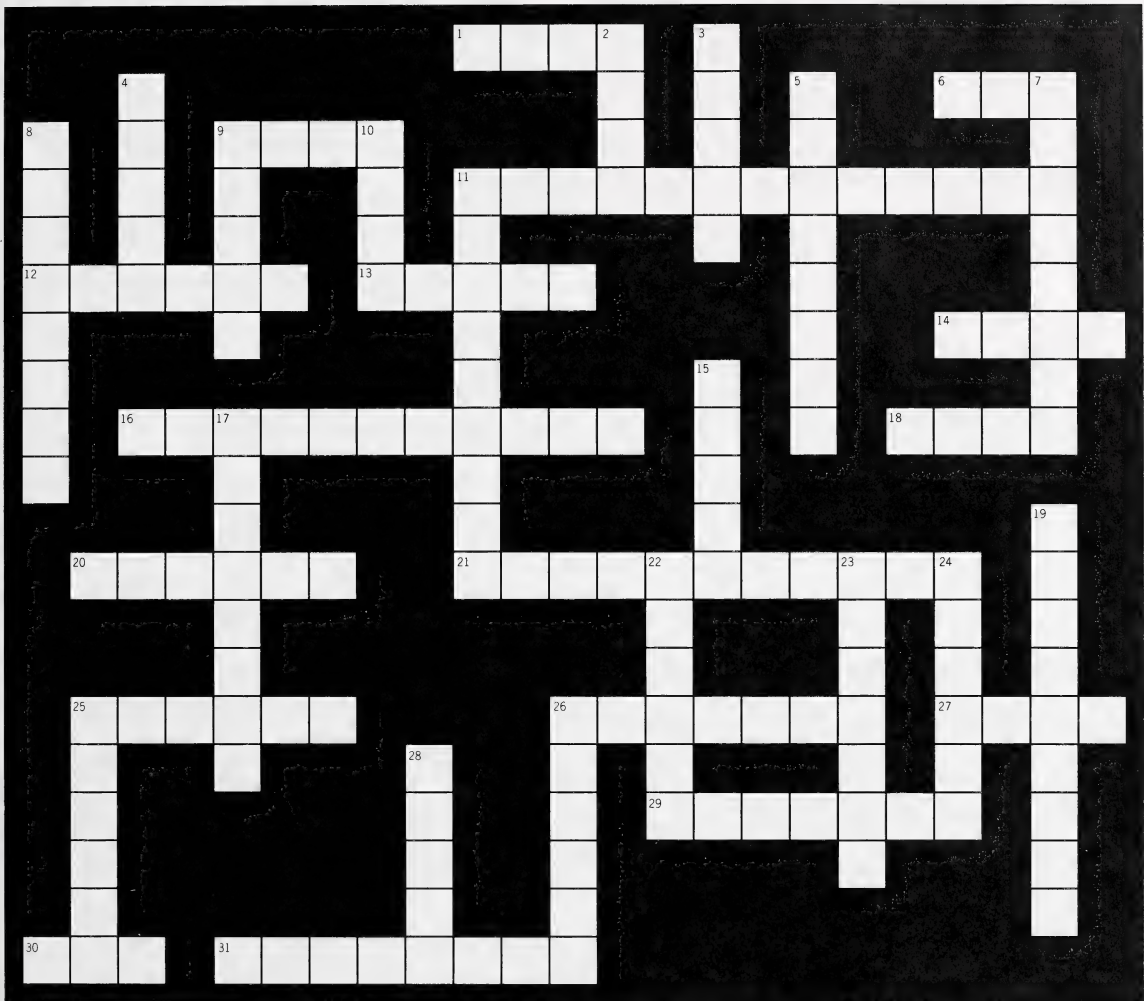
c. If Aniela puts her RRSP contribution into an investment generating a 6 percent return, how much money will the investment earn in one year?

d. From a tax perspective, will it make any difference whether Aniela puts her RRSP contribution into an investment that generates interest, dividends, or capital gains? Explain your answer.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

13. You've encountered a lot of terminology in this lesson—and throughout Section 3. To finish up Lesson 3, test your knowledge of this terminology by completing the crossword puzzle that follows. Note that the puzzle assumes that you worked through Lesson 3. If you chose not to do this, try the puzzle anyway, using the margin definitions in Lesson 3 to help you.



Across

1. A treasury _____ is a short-term debt instruments issued by the government.
6. A(n) _____ is like a term deposit, but it can't be cashed in before it matures.
9. _____ investments involve lending money in return for interest.
11. Contracts should have _____ on both sides.
12. A party to a contract can _____ a right to a third party.
13. A(n) _____ in Alberta is someone under the age of 18.
14. A mortgage is a _____ for the purchase of real property.

16. The _____ Act is the federal government's chief statute for regulating unfair business practices.
18. Negligence law is part of _____ law.
20. _____ funds are pools of money invested in a large number of securities.
21. Minors can be held liable for their contracts for _____.
25. Bait-and-_____ selling is illegal according to the *Competition Act*.
26. _____ gains occur when an asset is sold for more than it cost.
27. Blue _____ stocks are shares in companies with proven track records.
29. A(n) _____ warranty is sometimes called a *guarantee*.
30. A(n) _____ is a debt-investment instrument issued by the federal government.
31. _____ income is taxed more heavily than income from dividends.

Down

2. The opposite of a capital gain is a capital _____.
3. _____ are investment instruments issued by governments and corporations.
4. _____ are claims by one party on goods owned by another party.
5. A breach of _____ doesn't give the buyer the right to rescind a contract.
7. Legal purpose and genuine consent are both elements of a valid _____.
8. Minors lack the _____ to make legal contracts for most purposes.
9. The *Food and* _____ Act is a federal statute.
10. A(n) _____ deposit is a type of interest-bearing investment.
11. A breach of _____ allows a buyer to rescind a contract.
15. The *Sale of* _____ Act was the first real consumer-protection statute.
17. When an investment and its interest is due to be paid back, it has reached _____.
19. _____ is the ability of an investment to be converted into cash.

22. A(n) _____ contract is one that isn't under seal.
23. Getting a haircut normally involves making a(n) _____ contract.
24. Equities are _____ or shares in companies.
25. Preferred _____ pay their owners dividends and a guaranteed cash value if the company goes under.
26. _____ *emptor* means *let the buyer beware*.
28. Every legal contract must have a valid _____ and acceptance.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

In this rather lengthy optional lesson, you've looked at some of the laws governing the making of investments. If investing interests you, you'll find a wealth of books available on the topic in any bookstore—and innumerable sites on the Internet. As a high school student, you may find the topic pretty remote from your day-to-day reality; but remember, the sooner you start to invest whatever money you can, the longer it will have to grow. When it comes to investing, time is your greatest ally.

Suggested Answers

1. In the case of a non-traded debt investment, the usual trade-off for a good return is liquidity. The more tightly your money is locked in, and the longer the term it's locked in for, the higher the rate of interest you'll be paid for it. This is why a five-year GIC will likely get you a much better return than a savings account. Traditionally, Canada Savings Bonds have tended to break this rule in that they're redeemable at any time and have usually offered a rate that's competitive with GICs. However, in recent years, CSBs have offered less attractive returns, and they're available only a few weeks a year.
2. If interest rates go up, new bonds will offer those higher rates. This means that people buying new bonds will want the new ones more than the old ones. The result is that the value of the old ones goes down. Conversely, if rates go down, the old bonds with their higher rate suddenly become an attractive buy, and their value goes up accordingly.
3. It all depends. If you intend to keep the bond for the full ten years no matter what happens, it makes little difference, except that the interest rates on the bond will be fixed while those on the CSB could change. If you expect rates to go up, the CSB might be a better bet.

Of course, if you want to keep your option of cashing in your investment before it matures, the bond offers a chance to make some capital gains if its value increases. For this reason, all things considered, the bond will likely be your best bet.

4. Your answer will depend on you and your personal investment goals. If security is the most important thing for you, then you're far better off with the LMN Company. However, if you want to maximize your chance of making lots of money on capital gains and you can sleep soundly at night knowing that you've made a risky investment, the ABC Company is your best bet. Investment counsellors normally advise younger people to have a greater percentage of their money in higher risk/higher return investments than older people. This is because if they do lose money, they have more time to make up their losses in other investments.

5. They'd feel this way because, as the old proverb says, their eggs wouldn't all be in one basket. If the stock market were to plunge, for instance, a balanced fund wouldn't suffer too badly because a hefty percentage of its holdings would be in bonds.
6. Answers will vary, but most investment counsellors would advise you never to invest much money on hot tips from friends. An equity mutual fund spreads your investment dollars over a large number of stocks, which is a far safer way to invest. Of course, spreading your investment also kills any chances of that big score on a hot stock.
7. Nandia's GIC is guaranteed by the CDIC, but her mutual fund isn't.
8. You both have security for your first \$100 000. Your money is guaranteed by the CDIC, and your friend's is guaranteed by the government of Alberta. Your last \$20 000, however, is less secure; should the bank fail, you could lose all or part of it. Your friend's money, by contrast, is fully guaranteed by the Alberta government. Of course, Canada's chartered banks are themselves all very secure institutions. The chances of one of them failing are very small indeed.
9.
 - a. The bonds and debentures that Fund B invests in, being corporate rather than government bonds, are less secure than those that Fund A invests in. Being less secure, they have to offer a higher rate of interest to attract investors. This is likely why Fund B has done better. With greater risk, you get a greater return.
 - b. The only guarantees are those offered by the institutions issuing the bonds. In some cases, this is a great deal of security indeed. In other cases, it will be considerably less.
 - c. Answers will vary. Bond funds in general are fairly conservative investments, so neither investment would be rash. The ultimate decision hinges on your investment goals, strategies, and time lines.
10. The preferential tax rate given dividend income from Canadian corporations is designed by the government as a financial incentive for people to invest in Canadian companies. Such investment allows companies to expand, create jobs, and generate wealth for Canadians; so it's in the public interest for people to take risks and invest rather than simply stick their money into savings accounts. For the same reason, capital gains are also given preferential tax treatment—even more preferential than dividends.
11.
 - a. Reid spent \$1000 on his shares (100 shares @ \$10) and sold them for \$1300 (100 shares @ \$13). This means that he made a capital gain of \$300. He'll have to pay tax on 50% of this, or \$150.
 - b. Reid's capital gains tax is 26% of \$150, or \$39.
12.
 - a. Aniela can contribute a maximum amount of \$6300 to an RRSP. This is 18% of her last year's earned income, and since this figure is less than the ceiling of \$16 500 for contributions, it's as much as she's allowed to contribute by law.
 - b. If Aniela decides not to make an RRSP contribution, her taxes will be \$5950 ($\$35\,000 \times 17\%$).

If she does make the maximum contribution the law allows, the income on which she's taxed is reduced to \$28 700 ($\$35\,000 - \6300). Her tax on this amount will be \$4879 ($\$28\,700 \times 17\%$).

This means her savings in taxes will be \$1071 ($\$5950 - \4879).
 - c. In one year, her investment will earn \$378 ($\$6300 \times 6\%$).

- d. From a tax perspective, it won't really make a difference where Aniela puts her contribution since the return on the investment won't be taxed until it's withdrawn—hopefully many years later when Aniela is retired.

13.

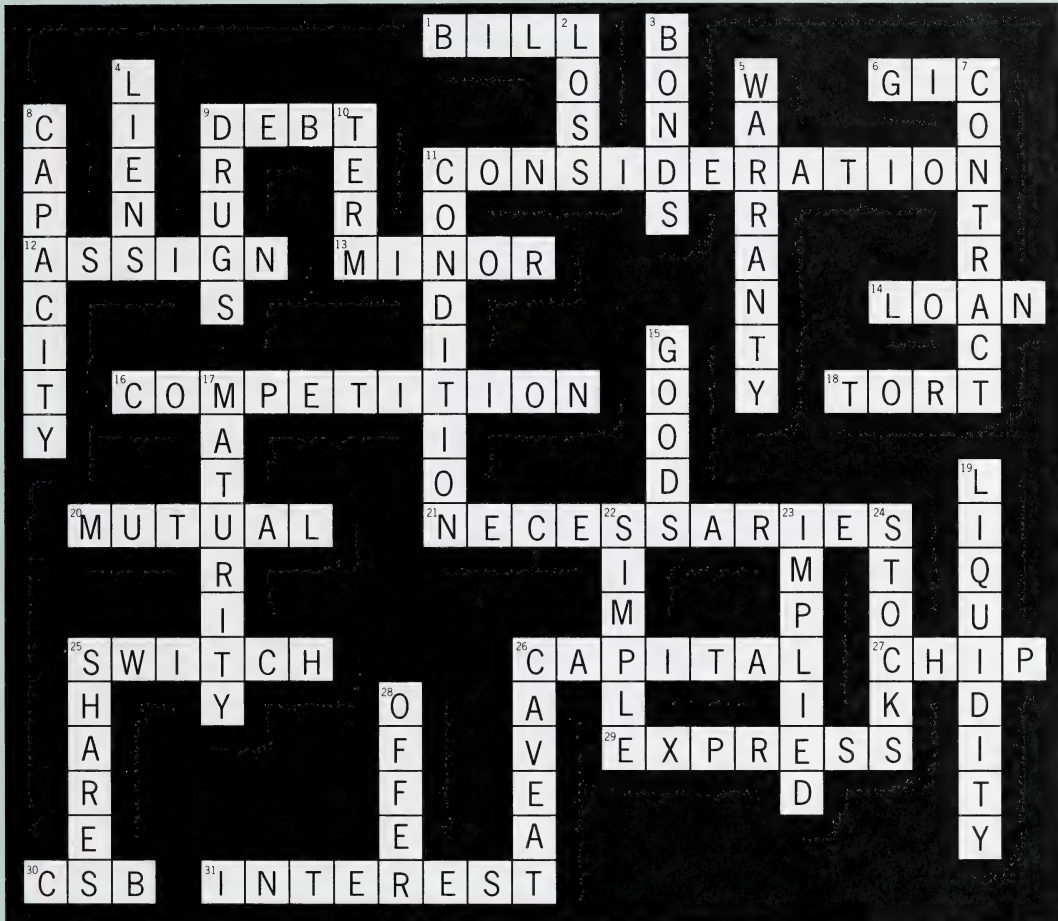


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Section 3 Conclusion



This has been a lengthy section, especially if you completed the optional final lesson. In Lesson 1 you examined the protection the law of contracts offers consumers as a result of its evolution over many years as part of the common law. Then in Lesson 2, you looked at how modern legislation has developed to respond to our increasingly complex consumer society. You were also introduced to specific pieces of legislation and learned how they protect consumers from unscrupulous and unfair business practices. Finally, if you chose to do Lesson 3, you turned to a very different topic and examined some of the legal aspects involved in making investments.

At times, you may have found the material in this section heavy going; but if you worked your way through it carefully, you should now have a lot of sound, practical information at your disposal—information that should enable you to become a wiser, more responsible consumer—and a person who knows his or her basic rights as an owner, buyer, and seller of property.

LEGAL STUDIES 3010

SUMMARY



In Legal Studies 3010, you've had an overview of some of the important principles and issues in the areas of both property and consumer law. In studying property law, you've learned the difference between real and personal property, and you've examined the legalities involved in renting property of both sorts. Then, in your examination of real property, you went on to investigate the legal aspects of buying and building a home.

In the area of consumer law, you began your investigation with a look at the protection offered consumers by the law of contracts and then went on to look at some of the legislation that has been passed over the last few decades to increase this protection in our increasingly complex consumer society. If you did the third (optional) lesson, you finished up the course by looking at a few of the principles involved in making financial investments.

As you leave school and home and go out into the world, you're likely to find that a great deal of the material you've covered in this course is directly relevant to your own life. Whether you're renting or buying a home, making purchases, investing money—even if you're just leaving your clothes at the cleaners or getting a haircut—the principles you've studied in this course will affect your life. Chances are that you won't remember all the details of what you've studied, and you could well run into situations where you'll need much more specialized legal advice; but you now have a good grounding in both consumer and property law, and you should have some idea of where you stand legally whenever you conduct business transactions.

CONGRATULATIONS

Congratulations on completing Legal Studies 3010! We hope you've enjoyed taking this course and that you've found it both interesting and rewarding. If you have, perhaps you'll consider taking another Legal Studies course in the future.



Glossary

acceptance: the assent to a definite offer

age of majority: the age at which a person can assume a legal obligation—in Alberta, 18 years

appraiser: a person who estimates the value of real property

asset: anything owned that has monetary value

assign: to transfer to a third party a right or obligation under a contract

assign a lease: to turn a lease over to another person who will become the new tenant and pay rent to the landlord

bailee: a person temporarily given possession of another's goods

bailment: a situation in which one person takes temporary possession of another's property on the understanding that it will be returned later

bailor: the owner of the goods temporarily given to another

bait-and-switch selling: the practice of attracting buyers by offering goods at a low price and then saying they aren't available and trying to sell more expensive goods instead

blue chip stocks: shares in well-known companies with proven records and which have paid out dividends regularly for at least 25 years

bonds: investment instruments issued by governments and corporations that can be redeemed at a set rate for a stipulated amount of interest, and which can in the meantime be traded for whatever price the market will bear

breach of condition: failure to perform a fundamental part of a contract

breach of contract: failure to perform a duty imposed by a contract

breach of warranty: failure to perform a minor part of a contract

bylaw: a law passed by a municipal government

Canada Savings Bonds: debt-investment instruments issued by the federal government that can be cashed in at any time

capacity: the legal ability to enter into a valid contract

capital gain: the profit investors make when selling things for more than they paid for them

capital loss: the loss investors occur when selling things for less than they paid for them

caveat: a notice to all interested parties that the caveator claims some interest in a piece of land

caveat emptor: a Latin expression meaning let the buyer beware

chattels: personal property

common law: the body of law, based on judges' decisions, that has developed over time in the English-speaking world

common shares: shares that are bought and sold on the market and that have the potential to increase or decrease in value depending on what the market dictates

consideration: something of value exchanged in a contract

contract: a legally binding agreement between two or more parties

credit bureau: a profit-making business that keeps records on the credit histories of people

credit rating: an assessment of a person's reliability when using credit based on his or her history of borrowing

damages: money awarded by a court to compensate a person for a wrong suffered

debentures: investment instruments much like bonds but less secure

debt investments: investments in which you lend your money to another party in return for interest payments

discharge: to complete the obligations in a contract

dividends: payments a company makes to shareholders in accordance with the number of shares they own—often paid at regular intervals

duty of care: a responsibility to not cause harm to others

easement: an interest in land that gives a person certain rights over land to which someone else has title

e-commerce: business conducted over the Internet

encumbrance: a claim or charge against a piece of land

equities: shares in a company that can be bought or sold in the marketplace

estate: an interest a person has in land

express condition: an important term in a contract that both parties agree upon

express contract: a contract in which the terms are specifically laid out

express warranty: an explicit, clearly stated guarantee that's usually written down

expropriation: the act of legally depriving a person of his or her property rights

face value: the amount the issuer of a bond or similar investment instrument promises to pay for it upon maturity

fee simple estate: the largest collection of rights a person can have in real property, giving the owner title to the land

fixed-term tenancy: a rental agreement that begins and ends on specific dates

fixture: anything that is attached to real property

foreclosure: a procedure whereby a mortgagor's right to a property is removed by a court order in favour of the mortgagee

fraud: the telling of an intentional lie that causes a loss to another party

growth: the increase in value of shares that will result in capital gains when the shares are sold

growth stocks: stocks in aggressive, young companies that offer much potential for growth but relatively little security

guarantee: an express warranty

guaranteed investment certificate (GIC): a type of investment much like a term deposit except that it usually cannot be cashed in before a stipulated date and frequently a minimum amount of money is required

implied condition: a term in a contract that hasn't been precisely laid out but is assumed by both parties

implied contract: a contract that is suggested by the actions of the parties

implied warranty: a guarantee that a seller may not actually make but which the law says is part of the contract anyway

interest: money paid by borrowers to those who lend them their money

investment dealer: stockbroker—a person who buys and sells securities like stocks and bonds for customers

joint tenancy: a tenancy that includes more than one lessee

joint tenant: someone who owns land along with one or more other parties and who cannot pass on his or her interest in the land in a will

landlord: a person who rents out a home to a tenant

lease: a tenancy agreement

lessee: the tenant in a leasing arrangement

lessor: the landlord in a leasing arrangement

liability: legal responsibility for harm done to others

lien: a claim by one party on goods owned by another party for debts the second party owes the first

life estate: an interest in land lasting only for the lifetime of the owner

liquidate: sell assets to raise cash

liquidity: the ability of an investment to be converted into cash

marketplace: a metaphor for the world of business and commerce

matrimonial home: the home in which a married couple lives

maturity: the time when an investment and the interest it has earned is due to be paid back

mediate: as a neutral third party, to help two parties in a dispute resolve their differences

mediator: an independent third party who works at helping the parties involved in a dispute come to an agreement

minor: a person under the age of majority

misrepresentation: a statement, either deliberate or accidental, that conveys false information

mortgage: a loan for the purchase of real property whereby the lender has a claim on the property until the money is paid

mortgagee: someone who lends money to another by way of a mortgage for the purchase of real property

mortgagor: someone who takes out a loan by way of a mortgage to purchase real property

mutual fund: a pool of money managed by a professional or group of professionals and invested in a large number of different securities

necessaries: goods and services considered essential for a person's health and well-being

negligence: the failure of a person to use reasonable care that results in an injury or loss to another

nuisance: interference with another's enjoyment of his or her property

occupier's liability: the responsibility that legal occupants of a premises have to others who come onto the property

offer: a proposal to enter into a contract

onus: the responsibility to prove something in court

periodic tenancy: a rental agreement running on a day-to-day, week-to-week, or month-to-month basis

personal property: any property you can own other than land and things attached to land

portfolio: the collection of investments held by an investor

precedent: a court decision that lower courts must follow in similar cases

preferred shares: shares that pay their owners dividends and a guaranteed cash value if the issuing company goes out of business

principal: an amount of money that has been borrowed (as opposed to the interest owing on it)

prospectus: in the mutual fund industry, a document explaining the objectives, investments, and degree of risk of a fund

quiet enjoyment: a tenant's right to be free from interference from another person in a rented premises

quitclaim: a mutual agreement whereby the mortgagor transfers his or her interest in the mortgaged property to the mortgagee

real estate purchase contract: an interim agreement to buy a property, signed by both buyer and seller

real property: land and those structures attached to it

real property report: a report that includes a survey of a property and a description of the surveyor's findings

realtor: a salesperson who helps clients sell and buy real property

Registered Retirement Savings Plan: a government-approved plan that allows savings for retirement to grow in investments that are sheltered from taxation until they're withdrawn from the plan

repudiate: to reject or disclaim a contract

restrictive covenant: an agreement that restricts the way a person with title to land can use that land

securities: a general term for investments such as bonds, stocks, debentures, treasury bills, and so on

security deposit: an amount left by a tenant with a landlord at the beginning of a tenancy to cover any amounts owing when the tenancy ends (commonly called a *damage deposit*)

shares: equities (or stocks)

simple contract: any contract—implied, oral, or written—that is not under seal

specialty contract: an agreement signed and put under seal

specific performance: a legal remedy requiring a party who breaks a contract to complete his or her contractual obligations

statute: a law passed by a government

stock exchange: a place where shares in companies are bought and sold

stock market: the market in which equities are bought and sold

stocks: equities (or shares)

sublet: as a tenant, to rent a premises (or part of it) to a third party who will pay rent to you

tenancy: the renting of real property

tenancy agreement: a contract between a landlord and tenant for the rental of a property

tenancy at sufferance: a situation whereby someone stays on a premises without the knowledge, or against the will, of the landlord

tenancy at will: a rental agreement whereby a landlord allows a tenant to stay on a premises while keeping the right to ask him or her to leave without notice

tenant: a person who rents, rather than owns, the home in which he or she lives

tenant in common: someone who owns land along with one or more other parties and who may pass on his or her interest in the property in a will

term deposit: a type of investment whereby money is lent by an investor to an institution, such as a bank, for a fixed term in return for a stipulated rate of interest

title: what is ordinarily called *ownership of land*

tort: a civil wrong other than a breach of contract

treasury bills: short-term debt instruments issued by the government that are bought at a discount and redeemed for a greater face value upon maturity

under seal: having a seal attached to it, thereby signifying a formal contract





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